



Request for Qualifications and Proposals (RFQ&P)

No. 5791-2022

**Information Technology Consulting Services for
District IT Technology Initiatives**

Proposal Due Date

9/23/2022 at 5:00 PM

Procurement, Central Services and Risk Management

purchasing-dept@socccd.edu

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Notice to Firms: Request for Qualification/Proposal (RFQ&P) No. 5791-2022

District: SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT
Project: RFQ&P 5791-2022
Information Technology Consulting Services for District IT
Technology Initiatives
South Orange County Community College District
RFQ&P Deadline: Friday, September 23, 2022
12:00pm
**Email Address for
Receipt of Proposals:** purchasing-dept@socccd.edu

NOTICE IS HEREBY GIVEN that the South Orange County Community College District, of Orange County, California, acting by and through its Governing Board, hereinafter referred to as "DISTRICT," will receive up to, but not later than, the above-stated time, responses to the Request for Qualifications and Proposals for the above Project.

There will be a mandatory pre-proposal meeting conducted via Zoom on September 8, 2022 at 10:30am. All RFQ&P respondents shall confirm their attendance by email to: purchasing-dept@socccd.edu by September 6, 2022 at 5:00pm pacific time. The subject line should read: "RFQ&P 5791-2022 Pre-Proposal Meeting Confirmation." Physical presence is not required. A call-in number will be provided prior to the meeting day to those who confirm attendance. Any proposer that does not attend the entire conference and/or does not arrive on-time may be deemed non-responsive.

A complete Request for Qualifications and Proposals may be viewed online at www.socccd.edu at the Bids link.

Any and all questions must be sent via email to purchasing-dept@socccd.edu. Contractors shall reference "RFQ&P 5791-2022 RFIs" in the email subject line. The final day for questions shall be September 2, 2022 no later than 5:00pm.

The District reserves the right to reject any or all submittals or to waive any irregularities and/or informalities in any proposals.

No proposer may withdraw any proposal for a period of one hundred and eighty (180) calendar days after the submission deadline.

Priya Jerome

Executive Director, Procurement, Central Services & Risk Management

PUBLISH: OC REGISTER 8/23/2022 & 8/30/2022

RFQ&P No. 5791-2022 Information Technology Consulting Services for District IT Technology Initiatives

SCHEDULE

Date of Issue / Document Available	8/23/2022
Advertisement Dates	8/23/2022 8/30/2022
Publication	OC Register
Requests for Information (RFI)	9/2/2022 at 5:00pm
Pre-Proposal Meeting	9/8/2022 10:30am Zoom conference call information will be sent to all firms that RSVP.
District Responds to RFI's	9/12/2022 End of Day
Due Date	Friday, September 23, 2022 12:00pm
Interview/Presentations (if needed)	10/7/2022 Time TBD Zoom conference call information will be sent to shortlisted firms.
Contract Negotiations (if needed)	10/10-10/14/22 All negotiations will take place via Zoom conference calls.
Anticipated Governing Board Approval	11/14/2022

1. DISTRICT & PROGRAM OVERVIEW

DISTRICT OVERVIEW

South Orange County Community District (SOCCCD) encompasses 382 square miles in South Orange County serving over 909,000 residents in 26 communities. We know that higher education is directly linked to quality of life and economic vitality. We have helped generations of families achieve their educational and career goals since 1967.

This multi-campus district is comprised of Saddleback College in the City of Mission Viejo (1967), Irvine Valley College in the city of Irvine (1985) and Advanced Technology Education Park (2007) in the city of Tustin.

The District is governed by a seven-member elected Board of Trustees and the District's chief executive officer is the Chancellor.

District Services provides centralized administrative services to our three campuses including: Chancellor and Trustee Services, Business Services, Technology and Learning Services, and Human Resources. These departments provide accounting, benefits, facilities planning, fiscal services, human resources, information technology, institutional research and planning, payroll, public affairs, procurement, contracting, risk management, and warehouse/mailroom services to our district.

The District continually assesses the effectiveness of its services through district-wide surveys, shared governance committees and task forces that are established to accomplish specific projects. Strategic planning is an essential tool for guiding our direction and assuring compliance with accreditation standards.

PROGRAM OVERVIEW

The District has determined the need for a pool of qualified firms to support and/or develop higher education applications in support of students, faculty, and staff for the next five years. The District intends to award Agreements and subsequent Work Orders to the pool of qualified firms.

2. INSTRUCTIONS, INFORMATION AND GENERAL CONDITIONS

PURPOSE OF RFQ&P

South Orange County Community College District (SOCCCD) is seeking to retain a pool of qualified firms to provide Information Technology Consulting Services for District IT Technology Initiatives. The entirety of this RFQ&P sets forth the District's requirements in detail. All responses should be submitted in accordance with the terms and conditions contained in the foregoing document.

DEFINITION OF TERMS

- The designation of District refers to the South Orange County Community College District, a political subdivision of the State of California.
- The term "**Proposers**" refers to Firms that elect to submit proposals for 13B Information Technology Consulting Services for District IT Technology Initiatives.
- The terms "**Contract**" and "**Agreement**" shall be used interchangeably within this document.
- Throughout this document, the term "**District**" shall be used to designate the rights and responsibilities of the South Orange County Community College District.
- The term "**District-wide**" represents District Services (DS), Irvine Valley College (IVC), Saddleback Community College (SC), and the Advanced Technology Education Park (ATEP).
- The term "**Proposer**" shall be used to designate the rights and responsibilities of the successful firm responding to this RFQ&P.

PROPOSAL QUESTIONS

All questions regarding this RFQ&P should be sent, via e-mail to Priya Jerome at purchasing-dept@socccd.edu.

Questions will only be accepted until 9/2/2022 no later than 5:00 PM. The e-mail subject line should read: "Your company name/Questions regarding RFQ&P No. 5791-2022." No direct responses will be sent to the company/firm asking the question. Questions will be answered in the form of an **Addendum** and sent to all potential respondents on/about 5:00PM on 9/12/2022. All addendums to this RFQ&P will be posted on the District's web site.

PROPOSAL SUBMISSION

It shall be the responsibility of the Proposer to ensure that Proposals are received via email submission as follows:

Email Submission:

Proposals are to be submitted, via e-mail, to the Purchasing Department no later than **12:00pm** on Friday, September 23, 2022. Submit Proposal to: purchasing-dept@socccd.edu The Proposal must be emailed to the address above as an attachment in Word or PDF format and not exceed file size of 10MB. Proposals with documents exceeding 10MB in size should be saved to a smaller file size or split up and sent as separate emails. Subject line of e-mail containing submitted

proposal should include and read “name of your company/submittal for RFQ&P No. 5791-2022 (“Email 1 of XX” if more than one).”

Proposals submitted in response are to be labeled Form A, B, C etc. and be in the following order:

1. **Letter of Interest and Approach** – PROPOSAL FORM A
2. **Personnel and Staffing Resources** – PROPOSAL FORM B
3. **Related Experience and Methodology** – PROPOSAL FORM C
4. **Fee and Rate Proposal** – PROPOSAL FORM D
5. **General Terms and Conditions** – PROPOSAL FORM E
6. **References** – PROPOSAL FORM F
7. **Addenda Acknowledgement** – PROPOSAL FORM G
8. **Appendices**
 - A. Non-Collusion Declaration
 - B. Equal Opportunity Affirmative Action Statement
 - C. Firm’s Certificate Regarding Worker’s Compensation
 - D. Sample Agreement
 - E. Submission Checklist

Oral, telephone, facsimile (fax machine) proposals **will not** be accepted.

RIGHT TO REJECT

This RFQ&P does not constitute a commitment by the District to award a contract. The District reserves the right to waive any irregularities and/or informalities and to reject any or all proposals and/or to cancel the Request for Qualifications & Proposals. The District expressly reserves the right to postpone the proposal opening date for its own convenience. The award shall be made on the proposal(s) that serve(s) the best interest of the District and will not be evaluated solely on a monetary basis; however, proposers are encouraged to submit their best prices in their proposals. Award will be based on proposer’s qualification and best fit as deemed by the District. No contract award shall exist until executed and approved by the District’s Governing Board.

MODIFICATIONS TO PROPOSALS

The proposal may be modified after its submission by written notice to the District of withdrawal and resubmission before the date and time specified for receipt of proposals. Modification will not be considered if offered in any other manner. No modifications will be allowed after the RFQ&P due date and time has passed.

PUBLIC RECORDS

All materials submitted in response to the RFQ&P are deemed property of the District upon submission to the District. Responses to the RFQ&P and other materials submitted in connection therewith shall be deemed “public records” except for those marked or noted by a Respondent as “trade secrets” (as that term is defined and used in Civil Code §3426.1), “confidential” or “proprietary”. Financial statements are not subject to disclosure under the Public Records Act. The foregoing notwithstanding, the District may reject for non-responsiveness a Response to the RFQ&P which indiscriminately notes that the Response or portions thereof are “Trade Secret”, “Confidential”, or “Proprietary” and exempt from disclosure as a public record. Notwithstanding the designation of materials submitted in response to the RFQ&P as “public records” such materials shall not be subject to disclosure under the Public Records Act until after the District has issued a recommendation for award of the Architectural Services Agreement. The District is not liable or responsible for the disclosure of RFQ&P Responses, or portions thereof, deemed to be public records, including those records exempt from disclosure if disclosure is required by law, by an order of a court of competent jurisdiction, or which occurs through inadvertence, mistake or negligence on the part of the District or its agents or representatives. If the District is required to defend or otherwise respond to any action or proceeding wherein request is made for the disclosure of the contents of any portion of an RFQ&P Response deemed exempt from disclosure hereunder, by submitting an RFQ&P Response, each Respondent agrees to defend, indemnify and hold harmless the District in any action or proceeding from and against any liability, including without limitation attorneys’ fees arising therefrom. The party submitting materials sought by any other party shall be solely responsible for the cost and defense in any action or proceeding seeking to compel disclosure of such materials; the District’s sole involvement in any such action shall be that of a disinterested stakeholder, retaining the requested materials until otherwise ordered by a court of competent jurisdiction.

ORDINANCES, LAWS AND REGULATIONS

The Proposer shall comply with all ordinances, laws, and regulations pertaining to the operation contemplated hereby, including, but not limited to, the California Workers' Compensation Act, the Federal Equal Employment Opportunities Act, and the Americans with Disabilities Act. The Proposer shall apply for, obtain, and maintain in force all permits and licenses required by the various agencies of Federal, State, and local government having jurisdiction over the Proposer operations. All operations and materials shall be in accordance with all applicable Federal, State, County and City laws, statutes and requirements.

WITHDRAWAL OF PROPOSALS

Any Proposer may withdraw their proposal by written request via e-mail to purchasing-dept@socccd.edu at any time **prior** to the deadline set for receipt of proposals. The subject line of the e-mail should include and read: “Your Company Name/Withdrawal of RFQ&P No. 5791-2022.” No proposal may be withdrawn or modified after that deadline. Withdrawn proposals may be resubmitted up to the time designated for the receipt of proposals provided that they are then fully in conformance with the general terms and conditions of the RFQ&P.

IRREVOCABLE OFFER

Proposals shall be considered irrevocable offers for a period of one hundred and eighty (180) days from the date of receipt and may not be withdrawn during this period without consent of the District.

COST OF PREPARING PROPOSALS

Any and all costs associated with the preparation of responses to this RFQ&P, including site visits, oral presentations and any other costs shall be entirely the responsibility of the Proposer and shall not be reimbursable in any manner by the District.

COMPLETION OF PROPOSALS

Proposals shall be completed in all respects as required by the instructions herein. A proposal may be rejected if it is conditional or incomplete, or if it contains alterations of form or other irregularities of any kind. A proposal will be rejected if, in the opinion of the District, the information contained therein was intended to erroneously and fallaciously mislead the District in the evaluation of the proposal. Proposers are required to follow and adhere to the format as prescribed in this RFQ&P.

EXAMINATION OF CONTRACT DOCUMENTS

Proposers shall thoroughly examine the contents of this RFQ&P. The failure or omission of any Proposer to receive or examine any contract document, form, instrument, addendum, or other document shall in no way relieve the firm from obligations with respect to this RFQ&P or to the contract to be awarded. The submission of a proposal shall be taken as prima facie evidence of compliance with this section.

If any ambiguity, conflict, discrepancy, omission or other errors in the RFQ&P is discovered, then the Proposer shall notify the District of the error in writing and request modification or clarification of the document through the timelines and process identified in the Proposal Questions / Requests for Information (RFI) section of this RFQ&P. All requests for clarifications shall be sent to the attention of the Executive Director of Procurement, Central Services and Risk Management by email at purchasing-dept@socccd.edu.

ERROR IN PROPOSAL

Proposer shall be bound by the terms and conditions of the proposal. However, if material errors are found in a proposal, the District may notify the Proposer that the submitted proposal requires correction of the errors. The District reserves the right to request additional information and/or clarification to allow corrections of errors or omissions.

RESPONDENTS CONTINUING OBLIGATION

Each Respondent is under a continuing obligation, commencing upon submission of its RFQ/P Response, to immediately notify the District, in writing, if it learns that any of the following have occurred: (i) any statement made in any portion of its RFQ/P Response was false, misleading or omits material facts rendering any statement in its RFQ/P Response to be false or misleading; (ii) circumstances have occurred since the Respondent submitted its RFQ/P Response that, if they had occurred prior to the date that the Respondent submitted its RFQ/P Response, would have

required the disclosure of such circumstances; or (iii) the Respondent has undergone a change in ownership in which ownership of fifty percent (50%) of more of its stock, ownership equity or assets has changed.

NO DISTRICT WARRANTY

Respondents are solely responsible for confirmation of the suitability of any information provided by the District relating to the Project or this RFQ&P, including, estimates of costs, statements of needs or requirements, projections, and budgets. The District does not warrant the accuracy, sufficiency or completeness of such information.

INTERVIEWS

The District intends to interview firms and has scheduled interviews on 10/7/2022 to be conducted via a Zoom conference call. Oral presentations will be evaluated and may be subjected to the selection criteria. The District requires the mandatory presence of the designated representatives identified in the proposals as being the ones who will be assigned to the District be present and prepared to respond to District inquiries. The decision to hold interviews and the scope or any limitations thereof shall be at the discretion of the District.

AWARD WITHOUT DISCUSSION

The District reserves the right to make an award without further discussion of the proposals received. Therefore, it is critical that all proposals submitted shall be in the most favorable terms possible, both economically and technically.

CONTRACT COMMENCEMENT/TERM

It is the intent of the District to commence the resulting contract/s as soon as possible. Performance period for this contract is anticipated to be from 11/15/2022 through 11/14/2027. Term shall not exceed five (5) years. After award, contract is subject to cancellation with 30-days written notice by either party.

INDEPENDENT CONTRACTOR STATUS

It is expressly understood that the firm named in any contract entered into by the District is acting as an "independent contractor" and not as an agent or employee of the District.

DISTRICT MODIFICATIONS TO PROPOSALS

The District expressly reserves the right to modify any portion of this RFQ/RFP prior to the latest date/time for submission of RFQ&P Responses, including without limitation, the cancellation of this RFQ&P. Any interpretation, modifications, correction, or change of this RFQ&P will be made by written Addendum and will be issued by the District and shall become part of the RFQ&P. Interpretations, corrections, or changes of this RFQ&P made in any other manner will not be binding, and Proposers shall not rely upon such interpretations, corrections, and changes. All Addenda issued to this RFQ&P will be posted to the District web site at www.socccd.edu on the bids link. Addenda will also be e-mailed to all that are known to have received a copy of the RFQ&P. Since failure to acknowledge any Addendum(s) may be cause for rejection, Proposers must return the addendum-completed acknowledgment(s) prior to or with the proposal. See Proposal Form G.

NO ORAL CLARIFICATIONS/MODIFICATIONS

The District will not provide any oral clarifications or modifications to the RFQ&P or the requirements hereof; no employee, officer, agent or representative of the District is authorized to provide oral clarifications or modifications to the RFQ&P. No Respondent shall rely on any oral clarification or modification to the RFQ&P.

NEGOTIATION

District reserves the right to negotiate the final pricing and all other terms and conditions before award of contract.

AWARD OF CONTRACT

It is anticipated that a contract/s will be awarded by the Board of Trustees at a regularly scheduled meeting on 11/14/2022. The award will be made to the responsive and responsible firm/s judged to offer the most advantages and deemed the best fit for the District. At the time of the formal award, the apparent successful firm/s shall have agreed to contract terms representing the understandings between the parties as to terms and conditions which will govern the relationship of District and Proposer and the obligation of each party for performance of the Agreement.

FINAL CONTRACT

The following documents are considered part of the final Agreement, in order of precedence:

- A. The final Agreement between the District and the Proposer;
- B. This RFQ&P as originally released, with Appendices and any addenda released prior to proposal opening.
- C. The Proposer's proposal in total, including all addenda and attachments;

All of the above documents are intended to cooperate and be complementary; provided further, however, that in the event of a conflict between the final Agreement and the provisions set forth in the above referenced documents and/or any other attachments or exhibits thereto (referred to as "referenced documents" for the purposes of this section), the Agreement shall control, unless the provisions set forth in any of the above "referenced documents" to this Agreement provide the District with greater benefits or more expansive services in which case such provisions set forth in any "referenced documents" shall compliment the terms of the Agreement. The intention of the documents is to include all labor, materials, equipment and transportation necessary for the proper delivery of all services called for in any contract which may arise as a result of this RFQ&P.

NON-COLLUSION DECLARATION

Declarations are required to be completed by the Proposer declaring that the proposal is in all respects fair and without collusion or fraud. Please see Appendix A.

EQUAL OPPORTUNITY AFFIRMATIVE ACTION STATEMENT

Proposer must accept and sign the Equal Opportunity and Affirmative Action Statement set forth in Appendix B.

PROHIBITED INTEREST

No official of the District who is authorized in such capacity and on behalf of the District to take part in negotiations or to make, accept or approve this contract, shall have direct or indirect financial interest in the award or any part thereof. Proposer shall receive no compensation hereunder should bidder aid, abet or knowingly participate in violation of this article or breach or violation of this article, the District shall have the right to terminate the contract either in part or in whole and any loss or damage sustained by the District in procuring the services on the open market which the Proposer agreed to perform, shall be borne and paid for by the Proposer.

QUALITY OF WORK

The Proposer shall be responsible for the performance of all work as specified herein and shall guarantee that work will meet or exceed the specifications as set forth herein. If it is determined by the District that such services and/or materials do not meet requirements of the District, the Proposer shall be required to correct the same at their own expense.

QUALITY OF PERSONNEL ASSIGNED TO THE WORK

The Proposer shall not employ on this account any unfit person or anyone not skilled in the work assigned to her/him and shall devote only its best qualified personnel to work under this contract. Should the District deem anyone employed under any contract which may arise as a result of this RFQ&P to be incompetent or unfit to perform their duties and so inform the Proposer, the Proposer shall immediately remove such person from this work and such individual shall not again, without prior written permission of the District, be assigned to work under this contract.

PROPOSER CONDUCT

During the RFQ&P window (from release of this RFQ&P to final award), proposer is not permitted to contact any District employees, members of the evaluation committee, members of the Board of Trustees or any consultant or professional retained by the District for the purpose of providing the District advice or professional services relating to the Project or the RFQ&P unless at the request of the District's designated contact person (Priya Jerome, Executive Director of Procurement, Central Services & Risk Management) or to fulfill pre-existing contractual obligations. No gratuities of any kind will be accepted, including meals, gifts, or trips. Violation of these conditions may constitute immediate disqualification.

ACCESSIBILITY OF INFORMATION TECHNOLOGY

The District is committed to an accessible environment for all Faculty, Staff, Students, and Community Members. To support this goal only products which are accessible to all Faculty, Staff, Students, and Community Members as defined under Sec 508 of the Rehabilitation Act (<http://www.section508.gov/section-508-standards-guide>) and WCAG 2.0 Level AA (<http://www.w3.org/TR/WCAG20/>) specifications will be purchased.

The vendor shall provide a product or service that meets the District's Accessibility and Usability requirements, and maintain documentation describing the conformance to specified standards on a public website. The vendor will assume financial responsibility for any accommodation expenses incurred due to a failure of the product/service to meet accessibility requirements.

With respect to accessibility requirements, the vendor shall:

1. Conform to section 508 of the Rehabilitation Act (<http://www.section508.gov/section508-standards-guide>) and WCAG 2.0 Level AA (<http://www.w3.org/TR/WCAG20/>) specifications.
2. Provide documentation regarding the level of accessibility conformance in the form of a Voluntary Product Accessibility Template (VPAT) and documentation as to how the product meets WCAG 2.0, Level AA.
3. Comply with all applicable FCC regulations regarding advanced communications services, including support for multi-modal advanced communications services to facilitate communication between individuals using digital text, audio, and video (<http://www.fcc.gov/encyclopedia/advanced-communications-services-ac>).
4. Respond to any accessibility issues discovered or reported by users within one (1) business day and communicate in writing a timeframe specific to resolving the reported issue(s). Resolution of reported accessibility issue(s) should be addressed as the highest priority within the next immediate development cycle or otherwise mutually agreed upon timeline.
5. Include considerations for accessibility and universal design in product development, testing, and updates by ensuring to the greatest extent possible equivalent ease of use for individuals with disabilities as compared to non-disabled individuals.
6. Identify a designated accessibility representative to address issues or questions pertaining to the accessibility of the product or service.
7. Proposer(s) who are deemed by the District will be required to submit their proposed products and documentation to an independent third-party firm of the District's choosing for a review of the accessibility of your proposed products and services. The District reserves the right to direct the vendor regarding which sections of the proposed system will be evaluated. The Proposer and District will be invited to the debrief meeting and provided a copy of the final report. The costs for this evaluation will be fully covered by the Proposer.

3. EVALUATION OF PROPOSALS

The proposals shall be primarily evaluated based upon qualifications of the firm and personnel, innovativeness, demonstrated knowledge, and estimated fees. Experience with higher education and California community college clients is desirable, but not absolutely required.

Selection Process

All proposals will be examined for merit and ranked by a screening committee according to quality and responsiveness. The top proposals will be placed on a short list of finalists and may be called for interviews. The interview process may include members from the District's leadership in addition to select members of the screening committee.

Team members giving the presentation shall consist of those who will actually direct, execute, and complete the project. The firm or firms selected as first choice will be notified and asked to negotiate final terms of the contract. Contracts will be forwarded to the Board of Trustees for approval and authorization to proceed.

Content and Order of RFQ&P Response

Firm's proposal should be concise and contain the proposal form and sections as identified below. RFQ&P responses submitted in formats other than those prescribed in this RFQ&P document may be rejected at the sole discretion of the District. All sections identified below must be included for the RFQ&P response to be considered complete and must be divided into tabbed sections.

Proposal Form	Section Title	Points
A	Letter of Interest and Approach	10
B	Personnel and Staffing Resources	30
C	Related Experience and Methodology	30
E	Fee and Rate Proposal	30
	Total	100

Interviews	Points
	100

4. SCOPE OF SERVICES

Overview

The District intends to award Contracts and subsequent Work Orders to a pool of qualified professional Information Technology (IT) consulting firms that can provide qualified IT consultants with a mix of technology skills, according to project needs, on an as needed when needed basis to support and/or develop higher education applications for the next five (5) years.

A list of previous, current, and anticipated future projects is provided in Section 5 as an informational resource to proposing firms.

The awarded firm shall be able to provide IT consultants who can work onsite, hybrid, or remote embedded with the SOCCCD District IT team. No travel expenses will be provided by the District.

Required Skills and Experience

The firm shall be able to provide IT consultants with the following skills and experience at minimum:

- information security,
- cloud development,
- mobile-responsive development,
- project management,
- software architecture,
- business analysis,
- programming,
- database design and administration,
- testing/QA,
- software support,
- release management
- mobile development

Development-Specific Technical Qualification Requirements

The firm shall be able to provide IT consultants with the following experience (may vary by individual consultant and project requirements):

- Deep experience with the District's development stack:
 - o Azure DevOps (ADO) for Application Lifecycle Management (ALM)
 - o .NET framework, ASP.NET with C#
 - o Microsoft SQL Server for database
 - o MVC, MVP, MVVM design patterns
 - o ASP.Net Web API
 - o Microsoft .Net C#
 - o HTML, CSS, Javascript
 - o React, Angular, Typescript

- AWS EC2 and Lambda
- Deep experience with Agile Scrum software development approach. Experience with Kanban and other Agile methodologies is desirable.
- Experience with test-driven development.
- Must have web development expertise.

Consultant Roles

The firm shall be able to provide a mix of IT consultants in the roles identified below. This is a representative sample only and other roles may be needed to meet specific project requirements.

1. Cloud Administration

Cloud administration with 2 or more years of experience configuring with best practices and troubleshooting Microsoft Office 365 and Google Workspace. Individuals must be comfortable with a scripting language such as powershell. Practical experience configuring and administering AWS is preferred but not required.

2. Security Engineer

Security engineering with 2 or more years of experience configuring and customizing 2 or more of the following security technologies:

- Identity Management
- Endpoint Detection and Response
- Email security hosted solutions
- Privilege Access Management
- Windows Defender suite
- Windows security best practices including group policy

3. Project Manager

Experienced and proven project manager with at least 7 years' experience managing Information Technology projects. Plans, directs and controls projects of 1,000 work-hours or larger. Capable of serving in the role of a Business Systems Analyst, or working with a team of analysts to define project requirements and drive an appropriate solution design. The Project Manager role requires a hands-on approach to managing, directing and controlling successful software development projects.

4. Lead Business Systems Analyst

Responsible for maintaining the overall direction and coordination of the requirements gathering efforts for the development process. Develops the templates, approaches and methods used in the analysis and requirements gathering process. Participates in hands-on sessions with end users and organizational stakeholders. Responsible for the work products and quality control of any Business Systems Analysts working beneath them. Familiar with a variety of software development and requirements methodologies. Agile

Scrum experience required. Minimum experience of 7 years in a business systems analyst role with a minimum of two years in an oversight role.

5. Business Systems Analyst

Responsible for interviewing users and stakeholders to gather functional requirements of the software system. Participates in hands-on sessions with end users and organizational stakeholders. Familiar with a variety of software development and requirements methodologies. Agile Scrum experience required. Minimum experience of 3 years in a business systems analyst role.

6. Senior Microsoft .NET Technical Lead

Experienced and proven solutions architect and software engineer with at least 10 years' experience designing and developing software solutions, and 6 or more years focused on Microsoft .NET technology. Capable of designing software architecture for software solutions, developing architecture components, developing full lifecycle solutions, leading and directing technology teams, mentoring technology teams. Responsible for the successful application of best practices, design patterns, and innovative solutions to each project they touch, the Technical Lead is expected to make well informed technology decisions for the projects. An expert in several software technology disciplines, this team member is also expected to participate in the development of the solution, and to assist other team members to solve difficult problems. Agile Scrum experience required.

7. Senior Microsoft .NET Developer

Experienced and proven software engineer, with 6-10 years' experience designing and developing software and 3-5 years' experience developing Microsoft .NET applications for both Client/Server and web-based solutions. Capable of working independently or in a team to develop strong technology solutions using SOCCCD development stack technologies. Agile Scrum experience required.

8. Microsoft .NET Developer

Software engineer with 1-3 years' experience in developing web based and client/server applications within the Microsoft development stack. Knowledge of SOCCCD development stack technologies. Agile Scrum experience required.

9. Senior Database Architect

A database architect with at least 10 years' experience developing IT solutions. Capable of modeling enterprise databases, architecting database access and security practices and designing high-availability databases for the enterprise using the SQL Server database. Agile Scrum experience required.

10. Database Architect & Developer

Creates application level functionality for the database elements of the application suite such as stored procedures, views, indexes and triggers. Ensures that the data elements

are high performing and can accommodate the needs of the business logic and user interface modules. 5+ years of development experience with Microsoft SQL Server. Agile Scrum experience required.

11. Senior QA Engineer Technical Lead

Responsible for creating, planning and directing the quality assurance effort of the project. Works with the client to determine the needs of the user base and anticipated demands on the system. Creates test harnesses (load and functionality) and staging environments for the project. Oversees the defect tracking and resolution process for the project. Involved in key areas of the QA process in a hands-on role. 7+ years of QA work as a team member. Agile Scrum experience required.

12. Senior QA Engineer

Self-directed in planning, documenting and executing test cases based on direct interaction with software developers, analysts and end-users. Able to create automated tests (load and functionality) as necessary. Able to manually test a software application according to project test plans and test scenarios. Able to perform rigorous exploratory testing (heuristics-based attacks) with little or no direction. Carries out the testing of the application on both a unit and integration level. Reports defects found into the issue tracking system and re-tests as remedies are deployed. 5+ years in a QA role. Agile Scrum experience required.

13. QA Engineer

Carries out the testing of the application on both a unit and integration level. Reports defects found into the issue tracking system and re-tests as remedies are deployed. 3+ years in a QA role. Agile Scrum experience required.

5. SAMPLE PROJECT LISTING

The following list of previous current, and anticipated future projects is provided as an informational resource to proposing firms. Actual projects may vary from the list below based on the needs of the District.

Previous 12 Month Projects:

- Automated Account Remediation
- Extend use of log correlation
- Create, Document, Test standard golden images following STIG standards
- Create workaround for EDR/VM integration bug
- Email security enhancements

Current Projects:

- Ongoing testing and certification of updates to the My Academic Plan module
- Design and implementation of MySite staff, faculty, and student-facing pages
- Implementation of mobile-responsive MySite pages
- Student Information System Enhancements
- Student Payment Plan
- Information Security
- DW Information Security Initiatives
- MAP Enhancements
- Faculty Services Upgrade
- IMS Upgrade

Anticipated Projects Over Next 12 Months:

Consultant Role	Project Name	Anticipated # of Hours
QA Engineer 1	Student Information System enhancements	1026
QA Engineer 1	Electronic Forms Integration	512
QA Engineer 1	Student Information System to the cloud	512
QA Engineer 2	Ongoing testing and certification of updates to the My Academic Plan module	1640
QA Engineer 2	Student Information System enhancements	410
Senior Microsoft .NET Developer	Design and implementation of MySite staff, faculty, and student-facing pages	1026
Senior Microsoft .NET Developer	Implementation of mobile-responsive MySite pages	512

Senior Microsoft .NET Developer	APC Management	512
Security Engineer	Expand district-wide PAM infrastructure	240
Security Engineer	Build security related runbooks	240
Security Engineer	Implement Security Incident tracking system	240
Security Engineer	Refresh the current vulnerability management process	300
Security Engineer	Build and migrate to new EDR	400
Security Engineer	Implement cloud-based security patch management system	200
Security Engineer	Enhance existing email security infrastructure	240
Security Engineer	Participate in audit remediations	190

PROPOSAL FORM A
LETTER OF INTEREST AND APPROACH
(1 Page Limit for Letter of Interest)
(1 Page Limit for Cover Letter)
(No Page Limit for Proposer Firm Information)

Letter of Interest and Approach

The RFQ&P response should be introduced with a Letter of Interest that presents a statement of interest, firm's approach, and philosophy for implementing these services, and a brief description of the consultant/firm including qualifications for providing the requested services.

1. Provide a qualification statement to describe why the firm would be uniquely qualified to provide the services identified in this RFQ&P.

Cover Letter to District in addition to the Proposer's narrative must include all of the information noted below in a letter format.

The individual who is authorized to bind Consultancy Services for the Development of a District and Colleges' Consulting Services for District IT Technology Initiatives Proposal (hence, "Proposer") contractually must sign the cover letter, must indicate the signatory is so authorized, and must indicate the title or position of the signatory. **An unsigned cover letter shall cause the proposal to be rejected.** The cover letter must contain a statement from the Proposer that acknowledges that all documents submitted pursuant to this request for proposal process will become a matter of public record. The letter must contain the following:

- The Proposer's name, address, e-mail, telephone, and facsimile number.
- The Proposer's Federal Employer Identification Number and Corporate Identification Number, if applicable.
- The name, title or position, and telephone number of the individual signing the cover letter and statement signatory is authorized to bind the firm.
- The name, title or position, and telephone number of the primary contact and/or account administrator, if different from the individual signing the cover letter.
- Provide all the named people who will actually perform the work when the Program begins.
- A statement to the effect that the proposal is a firm and irrevocable offer, good for one hundred and eighty (180) days. **Please complete Proposal Form A through G and Appendices A through E as part of your RFQ&P response.**
- A statement expressing the Proposer's willingness to perform the services as described in this RFQ&P.
- A statement indicating that all forms, certificates and compliance requirements included in this RFQ&P are completed and duly submitted in the proposal response.
- A statement that there is no conflict of interest. Use Form E.

- A statement expressing the Proposer's availability of staff and other required resources for performing all services and providing all deliverables within the specified time frames as described in the RFQ&P.
- A statement attesting that the Proposer is not on the federal list of current companies or individuals that have been declared ineligible to receive Federal contracts due to a violation of Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended 29 U.S.C. Section 793; and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. Section 4212.
- Please indicate if the firm is a small, minority, women, and/or disabled veteran business enterprise by providing a copy of the current certification.

Proposer Firm Information

- Type of Firm:
Corporation: _____ Proprietorship: _____ Partnership: _____
Joint Venture: _____ Other (please describe): _____
- Business License Number: _____
- Number of years in business under firm name: _____
- Has the firm changed its name within the past 3 years?
YES NO
If yes, provide former name(s): _____

- Have there been any recent (within the last three years) changes in control/ownership of the firm?
YES NO
If yes, explain. _____

- Have officers or principals of the firm ever had their business license suspended or revoked for any reason?
YES NO

If yes, please explain. _____

- Does the firm have an acceptable history of working proactively to avoid litigation?

YES NO

If no, please provide specific information on termination for default, litigation settled or judgments entered within the last five (5) years. _____

- Within the past five (5) years, have one or more contract(s) to provide services to which the Respondent was a party to have been terminated for default of the Respondent officers or principals of the firm?

YES NO

If yes, please explain. _____

PROPOSAL FORM B
PERSONNEL AND STAFFING RESOURCES
(One Page Limit Per Resume)

Submit a minimum of 3 resumes for each role identified in Section 4. Scope of Services of this RFQ&P. Each consultant's resume shall not exceed a one page limit and shall minimally include the following:

1. Provide brief biographies, education, training, professional certifications, and work experience history of individual/s that will be working directly with the District, highlighting the skills identified with their tasks.
2. Specific qualifications and recent related experience providing services as described in this RFQ&P.
3. Indicate how many years the consultant has been on the firm's payroll.
4. Identify the proposed consultant's current and anticipated availability during the contract period.

PROPOSAL FORM C
RELATED EXPERIENCE AND METHODOLOGY
(5 Page Limit)

1. Provide a summary of the Firm's experience in relation to the services contemplated in this RFQ&P.
2. Describe how the Firm will provide services and fulfill the requirements and expectations of the District. Specifically, how will your team work with the District and college leadership, faculty, and staff to manage and keep projects on schedule in order to present the final product? Your response should include your approach to fulfilling the District's needs on an as needed when needed basis within a very short turnaround timeframe.
3. Of all the consultant roles identified in Section 4. Scope of Services, list the roles that your firm may have difficulty in providing on an as needed when needed basis upon the District's request.
4. Based on the RFQ&P scope, clearly specify any work that would be considered additional services and how those services are billed.
5. Do you provide weekly status reports? If so, describe the type of information the status report contains.
6. Name and state the number of public entity clients served within the past 5 years.

**PROPOSAL FORM D
FEE AND RATE PROPOSAL**

The proposed fees and rates shall include fully burdened hourly rates for each title/individual proposed for the work. Rates shall include all labor, materials, overhead and profit (OH&P), and other direct and indirect costs including incidental travel. It is the proposer's responsibility to understand the complexity of the District as well as the complexity of the proposed work and to submit an hourly billable rate accordingly using the form below.

Rate shall be firm and fixed for the five (5) year contract term. Actual contract rates will be subject to negotiation prior to issuance of any agreement.

Consultant Role		Hourly Billable Rate
1	Cloud Administration	
2	Security Engineer	
3	Project Manager	
4	Lead Business Systems Analyst	
5	Business Systems Analyst	
6	Senior Microsoft .NET Technical Lead	
7	Senior Microsoft .NET Developer	
8	Microsoft .NET Developer	
9	Senior Database Architect	
10	Database Architect & Developer	
11	Senior QA Engineer Technical Lead	
12	Senior QA Engineer	
13	QA Engineer	

PROPOSAL FORM E GENERAL TERMS AND CONDITIONS

Offer Held Firm: The Proposer agrees that it will not withdraw its offer for a period of *one hundred and eighty (180)* calendar days from the opening date.

Right to Reject and Final Agreement: The Proposer understands that the District reserves the right to reject any or all proposals and to waive any irregularities and/or informalities in the evaluation of proposals. Contingent to evaluation of proposals received, the District reserves the discretion to alter, modify, change, include or reduce the RFQ&P scope and pursuant to these changes and the successful negotiations with the Proposers, establish the final agreement.

Bidder Certification: The Proposer certifies that this bid is made without previous understanding, agreement or connection with any person, firm, or corporation making a bid on the same services, and is in all respects fair and "without collusion or fraud."

Execution of a Contract: If awarded a contract, the Proposer agrees to execute a contract in accordance with this Proposal and the District's Instructions for Submittal of Proposals, Information for Proposers, General Conditions, and Service Requirements immediately upon receipt of written notice of acceptance of the Proposal by the District.

Assumption of Contract: The Proposer agrees to assume operations under the contract after the Board approval of contract and within ten (10) calendar days following the District's notification to proceed.

Exceptions to Specifications: In submitting a proposal, the Proposer affirms acceptance of the complete Conditions Specifications and Requirements associated with the District's RFQ&P document, unless otherwise stipulated. Any variances or exceptions which the Proposer wishes to note with respect to any of the Conditions, Specifications, or any District Service Requirements are to be stated herein or in an attachment to the RFQ&P submittal which is to be titled "Exceptions."

Conflicts of Interest: All Proposers must disclose the name of any Board of Trustees member, officer, director, or agent who is an employee of the South Orange County Community College District, which includes any District employee. Further all Proposers must disclose the name of any District or District employee, or Board of Trustees member, who has, directly or indirectly, any financial interests in the Proposer's firm or any of its branches. Submit this information on an attachment to the proposal which is titled "Conflict of Interest" and include the person's name, interest or position, and percent of ownership, if applicable.

Financial Statement: Prior to the award of contract, the District reserves the right to request and the proposer shall provide the current financial statement of the Proposer that is reviewed or audited by a Certified Public Accountant.

Required Submittals: The Proposer’s detailed responses to the District’s specifications and evaluation criteria must accompany this Proposal.

District’s Right to Award: The signer hereby acknowledges that the District reserves the right to make the award to the Proposer which the District judges to have submitted the proposal most favorable to the District, with the District being the sole judge thereof.

Legally Binding: It is further certified that the person whose signature appears below is legally empowered to bind the company in whose name the proposal is entered and declares under penalty of perjury under California law that the firm’s proposal response to this RFQ&P is true and correct.

Litigation History: List all related litigation in the last five (5) years filed by either an owner, owner’s consultant, or contractor, against the firm.

SUBMITTED BY:

Company Name: _____

Contact Person: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____ Fax: _____

Email: _____

By: Signature (Manual)

By: Signature (Typed or Printed)

PROPOSAL FORM F
REFERENCES

Each Proposer must be able to present both current and past evidence of satisfactory experience in providing services requested. List all four-year higher education and community college districts that you or your firm has contracted with in the last five (5) years. Include the name of the institution or district, contact person, email address and phone number of individuals who can evaluate work that has been completed by the consultant(s)/firm/team member(s) in the past five (5) years. The District has prioritized collegiality and collaboration, and assessing how consultant(s) will function within that culture will be a critical evaluation component.

REFERENCES

Name of Entity: _____

Contact Person: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____ Fax: _____

Email: _____

Dates of Services: From: _____ To: _____

Types of Services Provided: _____

PROPOSAL FORM G
Addenda Acknowledgement

Addenda: Changes or corrections to the proposal document will be issued via a numbered addendum format at the time of the pre-proposal conference or at least five (5) calendar days prior to submittal date. Record below the number(s) and date(s) of addenda received, if applicable.

Addendum # _____ Date Received: _____

Addendum # _____ Date Received: _____

Addendum # _____ Date Received: _____

Addendum # _____ Date Received: _____

Addendum # _____ Date Received: _____

Addendum # _____ Date Received: _____

Addendum # _____ Date Received: _____

Addendum # _____ Date Received: _____

Addendum # _____ Date Received: _____

APPENDIX A
Non-Collusion Declaration

NON-COLLUSION DECLARATION
TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH PROPOSAL

State of California)
) ss.
County of _____)

_____, being first duly sworn, deposes and says that he or she is _____ of _____ the party making the foregoing proposal that the proposal is not made in the interest of, or on behalf of, any undisclosed person, Proposer, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham proposal, or that anyone shall refrain from submitting a proposal; that the Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the proposal price, or that of any other Proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and, further, that the Proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, Proposer, company association, organization, or to any member or agent thereof to effectuate a collusive or sham proposal.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Print Name

Signature

APPENDIX C
Firm's Certificate Regarding Worker's Compensation

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Name of individual, company or corporation

By: _____

Title: _____

Address: _____

City State Zip Code

(In accordance with Article 5 (commencing at Section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.)

APPENDIX D
Sample Agreement
Information Technology Consulting Services for District IT Technology Initiatives

The Respondent shall thoroughly review the below Agreement. As part of the proposal submission, indicate in a separate Tab of the RFQ&P Response the Respondent's acceptance of all terms and conditions set forth in the Agreement. If there is any term or condition of the Agreement, which a Respondent requests to be modified, the Respondent must: (i) specifically identify such term or condition; and (ii) set forth the specific text of the modification requested for each such term or condition. Notwithstanding any requested modification to any term or condition of the Agreement, no such modifications are binding on the District or enforceable against the District unless the District affirmatively and specifically accepts any such requested modification. Any Respondent whose RFQ&P Response does not identify requested modifications to terms or conditions of the Agreement will be deemed to have agreed to all terms and conditions set forth therein; if awarded the Agreement, such Respondent must execute the Agreement in the form and content attached hereto subject only to elements of such Respondent's RFQ&P Response accepted by the District.

Proposer agrees to the Agreement's terms and conditions with no exceptions.

YES NO

If no, pursuant to the above instructions, submit all exceptions in a separate tab.

<p>APPENDIX E</p> <p>Submission Checklist</p> <p>South Orange County Community College District</p> <p>Information Technology Consulting Services for District IT Technology Initiatives</p>
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Item	Included in RFQ&P Response
Proposal Form A: Letter of Interest and Approach	
Proposal Form B: Personnel and Staffing Resources	
Proposal Form C: Related Experience and Methodology	
Proposal Form D: Fee and Rate Proposal	
Proposal Form E: General Terms and Conditions	
Proposal Form F: References	
Proposal Form G: Addenda Acknowledgement	
Appendix A: Non-Collusion Declaration	
Appendix B: Equal Opportunity Affirmative Action Statement	
Appendix C: Firm's Certificate Regarding Workers' Compensation	
Appendix D: Sample Agreement for Information Technology Consulting Services for District IT Technology Initiatives	Only notate changed/exceptions to the Sample Agreement pursuant to the instructions highlighted and identified in Appendix D.
Appendix E: Submission Checklist	



SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT
MASTER INFORMATION TECHNOLOGY CONSULTANT SERVICES AGREEMENT
FOR WORK ORDERS

This Master Information Technology (IT) Consultant Services Agreement for Work Orders, hereinafter referred to as "Agreement", is made and entered into this 15th day of November in the year 2022 between **South Orange County Community College District**, 28000 Marguerite Parkway, Mission Viejo, California 92692, hereinafter referred to as "District", and [[Name (Primary Second Party)]] hereinafter referred to as "IT Consultant";

RECITALS

District is a California community college, providing, among other things, educational and support services to students in and around the County of Orange.

IT Consultant provides information technology consultant services to support information technology projects including, but not limited to, those services required by District as described in Request for Qualifications & Proposals (RFQ&P) No. 5791-2022.

District desires to retain IT Consultant to perform services, in accordance with the RFQ&P, and IT Consultant agrees to perform such services on the terms and conditions set forth herein.

IT Consultant is fully licensed to provide IT Consultant services in conformity with the laws of the State of California;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1 IT CONSULTANT'S SERVICES AND RESPONSIBILITIES

- 1.1. **Services.** IT Consultant shall provide and deliver all aspects of services related to the IT Consultant Services specified in Article 3 of this Agreement and the District's Request for Qualification & Proposals (RFQ&P) No. 5791-2022 referenced herein and made a part hereof, and the proposal (Proposal) submitted by IT Consultant to District, dated September 23, 2022, referenced herein and made a part hereof, (Collectively, the Services) to District. However, the Parties understand and agree that the services specified in the RFQ&P and/or Proposal are intended to cooperate and be complementary and shall be interpreted per the provisions in Article 12.19 Entire Agreement and Amendment.

As set forth herein, the District may pursuant to this Agreement, from time to time, issue Work Orders to IT Consultant authorizing certain work, and the provisions of this Agreement shall apply to all such Work Orders. IT Consultant shall not perform and District shall not be liable for any work performed by IT Consultant unless written authorization from District is given to IT Consultant in the form of such Work Order(s) prior to the performance of such work.

The IT Consultant shall provide to the District on the terms set forth herein, and within the time stipulated in each individual Work Order, all the services articulated in the IT Consultant's scope of work ("Services"), which may be more particularly described in a Work Order issued pursuant to this Agreement. The Parties agree if there is a proposal or similar document that the terms of this Agreement shall be controlling over any of the terms contained within the IT Consultant's proposal or similar document.

- 1.2. **Standard of Care and Professional Conduct.** IT Consultant shall perform all Services under this Agreement in a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. IT

Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. IT Consultant warrants that all of IT Consultant's employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. IT Consultant further represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. The Work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof. IT Consultant's services shall be provided and completed promptly and in such a manner as to avoid hindrance, interruption, or delay to the orderly progress and timely completion of Project. IT Consultant shall without additional compensation, correct or revise any errors or omissions in its deliverables. Defects will be in accordance with the requirements identified in Exhibit C.

IT Consultant or IT Consultant's employees and/or subcontractors who are determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or who fail or refuse to perform the Services in a manner acceptable to the District, shall be promptly removed from the Project and shall not be re-employed to perform any of the Services or to work on the Project.

- 1.3. **Key Individual Assignment.** The IT Consultant has been selected to perform the work herein because of the skills and expertise of key individuals identified in the requested Consultant resource roles. IT Consultant assignment for various Projects shall be assigned via Work Orders and will encompass the Consultant Roles identified in the Scope of the RFQ&P. Contingent to the District's request, the IT Consultant shall designate an Engagement Manager. Additionally, the IT Consultant must furnish the name and obtain approval after a resume' review of all requested consultant resources in IT Consultant's firm that will be associated with any given Project.
- 1.4. **Replacement of Key Individual.** Should any requested consultant resource fails to perform to the satisfaction of the District, the IT Consultant will immediately remove that person from the Project and replace that person with one acceptable to the District after review of resume' and/or interview.
- 1.5. **Relationship of IT Consultant to Other Project Participants.** IT Consultant's services hereunder shall be provided in conjunction with applicable contracts between the District and others providing services in connection with the Project. The IT Consultant is responsible for the adequacy and sufficiency of assigned project deliverables. The IT Consultant shall perform its duties in accordance with this contract and associated Work Orders shall coordinate all work with District as necessary to complete contract requirements.
- 1.6. **Project Schedule.** The IT Consultant acknowledges that all time limits stated in this Agreement and associated Work Orders are of the utmost importance to District. The IT Consultant shall submit for the District's approval a schedule for the performance of the IT Consultant's services. The schedule may be adjusted as the Project proceeds by mutual written agreement of the parties and shall include allowances for time required for the District's review and for approval by authorities having jurisdiction over the Project. The time limits established by this schedule shall not, except for reasonable cause (such cause shall be approved by District in writing), be exceeded by the IT Consultant .
- 1.7. **Independent Contractor.** IT Consultant, in the performance of this Agreement, shall be and act as an independent contractor and not an employee of the District. IT Consultant and its subconsultants, understand and agree that they shall not be considered officers, agents, employees, or volunteers of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. IT Consultant assumes the full responsibility of their actions and/or liabilities including those of their employees or agents as they relate to the Services to be provided under

this Agreement. IT Consultant shall assume full responsibility for withholding and payment of all federal, state, local and applicable income taxes; workers' compensation; contributions, including but not limited to, unemployment insurance and social security with respect to IT Consultant and IT Consultant's employees. IT Consultant should be aware that the IRS regulations require District to report total income exceeding six hundred dollars (\$600) under this and any additional Agreements in any given year. The District will not withhold taxes, unemployment insurance or social security for IT Consultant or IT Consultant's employees or subconsultants. IT Consultant agrees to defend, indemnify and hold the District, its Board of Trustees, officers, agents, employees, representatives, and volunteers harmless from and against any and all liability arising from any failure or alleged failure of IT Consultant to withhold or pay any applicable tax, unemployment insurance or social security when due or any failure or alleged failure to comply with any applicable regulation applicable to IT Consultant's employees or subconsultants.

ARTICLE 2 CONTRACT DOCUMENTS

- 2.1. The following contract documents are considered part of the final Agreement, in order of precedence:
1. The final executed Agreement between the Contractor and District.
 2. All properly executed Work Orders, and any Exhibits thereto.
 3. Request for Qualifications and Proposals ("RFQ&P") No. 5791-2022 for 2022 Information Technology Consulting Services for District IT Technology Initiatives dated August 23, 2022, as originally released, with Proposal Forms, Appendices and any addenda thereto – Exhibit A referenced herein and made a part hereof.
 4. IT Consultant's proposal dated September 23, 2022, including all addenda and attachments, but not including any provisions which do not exceed the minimum standards set forth in the RFQ&P – Exhibit B referenced herein and made a part hereof.
 5. Standards and Practices for dealing with defects and billing Exhibit C.

ARTICLE 3 SCOPE OF SERVICES

3.1. **Project Scope.**

1. **Overview:** IT Consultant shall provide the professional services specified herein for purposes of maintaining and enhancing District Student Information Systems.
2. **Services To Be Provided by IT Consultant:** Consultant resource services, including but not limited to Cloud Administration, Security Engineer, Project Manager, Lead Business Systems Analyst, Business Systems Analyst, Senior Microsoft .NET Technical Lead, Senior Microsoft .NET Developer, Microsoft .NET Developer, Senior Database Architect, Database Architect & Developer, Senior QA Engineer Technical Lead, Senior QA Engineer, and QA Engineer.
3. **IT Consultant's Resources:** Upon issuance of a Work Order, IT Consultant shall submit for District's approval a resume of each individual IT Consultant assigned to work on the project identified in the Work Order for prior written approval by the District's Directors of Administrative/Academic Systems prior to beginning work. IT Consultant agrees to provide the District with the resumes (qualifications, experience and education) at least two weeks prior to assigning the individual to work on the project identified in the Work Order. The District may choose to interview individual IT Consultants prior to approving them to work on the project identified in the Work Order. The District shall not be responsible for payment to IT Consultant for the services of any individual who works on this Agreement without the District's prior written consent.
4. **Documentation:** Functional and technical specification documentation shall be developed

by IT Consultant and delivered to District for acceptance by the District's Directors of Administrative/Academic Systems. "Documentation" means the documents, manual and written materials (including end-user and technical manuals) developed pursuant to this Agreement. Formal review and acceptance of all written user and technical documentation is required. The documentation may be reviewed by the Directors of Administrative/Academic Systems and designated District IT Directors and District and College end users.

5. Methodology: All work must be completed following documented industry standard agile methodology, protocol and best practices and be previously approved by the District IT Directors. Methodology documentation should include the following sections where applicable:
 - i. Methodology overview.
 - ii. Scope and resource management.
 - iii. Process for defining functional and technical specifications.
 - iv. Functional (product backlog) and technical specification documentation.
 - v. Functional and technical specification review and sign-off by District stakeholders. These artifacts are to be consistent with an agile software development methodology. Stakeholders are identified District business experts, Education and Support Services and IT technical staff.
 - vi. Code review by District IT staff.
 - vii. Unit testing of source code modifications.
 - viii. Module and functionality specific business testing scenarios.
 - ix. Formal user acceptance and sign-off.
6. Quality Assurance And Testing: During software development, IT Consultant shall include a phase for quality assurance and testing of all Software. Quality assurance and testing must follow documented industry standard methodology, protocol and best practices and be previously approved by an appropriate District Director of Administrative/Academic Systems. Quality assurance and testing documentation should include the following:
 - i. Quality assurance and testing overview.
 - ii. Module and functionality testing.
 - iii. Modifications based upon quality control and quality assurance testing results. The IT Consultant, District IT and designated District and college end users will conduct quality assurance testing.
7. Release Management: Develop standards and practices for identifying and resolving billings for software defects, including regression bugs (both pre-release and post-release) and develop definitions of "mission critical" and "non-mission critical" bugs and timelines required for consultant to fix each. These will be developed by IT Consultant and District in accordance with Standards and Practices as identified in Exhibit C.
8. Deliverables And Modules: Software Deliverables and Software Modules shall be as specified in writing by IT Consultant and approved in writing by one of the District's Directors of Administrative/Academic Systems, as needed, based on decisions madeduring the design process and in consultation with the District. "Software Deliverables" are defined as products, including, but not limited to, program source code, model/entity definitions, and build/migration instructions. "Software Modules" are defined as the functioning products of a software development project as well as any and all functionality described in the As-Built Documentation delivered by IT Consultant prior to "Go-live Software release." Software documentation must be delivered and accepted by the District prior to acceptance of software source code.
9. Security and Cloud Deliverables: Security and Cloud Deliverables shall be specified in

writing by IT Consultant and approved in writing by the IT Director: Infrastructure and Security as needed. "Security and Cloud Deliverables" are defined as discrete tasks related to district security or cloud infrastructure projects.

10. Progress Reports:

- i. Project Management Review. Formal review and approval of overall project management resources and project management structure by District is required. IT Consultant shall provide written progress reports to the Directors of Administrative/Academic Systems on a periodic basis and minimally on a quarterly basis when applicable, or more frequently if changes occur. One of the Directors of Administrative/Academic Systems has authority to approve such progress reports for the District.
- ii. Quality Assurance & Testing Plan Review. Formal review and approval of overall quality assurance and testing plans, approach and schedule by District is required. IT Consultant shall provide written reports for each module. The reports will be reviewed by the Directors of Administrative/Academic Systems. One of the Directors of Administrative/Academic Systems has authority to approve such reports for the District.
- iii. Monthly Progress Reports. IT Consultant shall submit to the Directors of Administrative/Academic Systems a detailed written monthly progress report describing the work performed during the reporting period.

11. Formal Progress Meetings: IT Consultant and District shall conduct formal quarterly schedule of scope management and risk assessment meetings with senior IT Consultant management. These meetings will involve IT Consultant project manager(s) on site, other key IT Consultant staff on site, and appropriate District IT Directors. IT Consultant shall provide in writing the following minimum information at the progress meetings:

- i. Complete and detailed account of the work completed (e.g., projects and project related tasks, modules worked on, functionality developed, documentation written and reviewed, testing and quality assurance completed, involvement of District IT staff, etc.) from the last quarterly meeting, as appropriate.
- ii. Cumulative IT Consultant personnel hours expended by position and dollar amount from the last quarterly meeting, as appropriate.
- iii. Review of any issues and concerns that have arisen and approach to dealing with them or assistance needed from the District from the last quarterly meeting, as appropriate.
- iv. Writtenn documentation for each module consistent with agile development methodology management reporting (e.g., Product Backlog, Sprint Backlog and Burndown Chart, etc.) or of project tasks completed.
- v. Planning for the next quarter (e.g., project plan for next quarter software development, any changes in IT Consultant personnel).

Additional information may be required and will be agreed upon between IT Consultant and District IT. These meetings shall occur at the Information Technology Department of the District.

ARTICLE 4 TERMS OF SERVICE

- 4.1. **Time is of the Essence.** Time is of the essence in the performance of each Party's obligations under this Agreement, including without limitation IT Consultant's performance of the service

required hereunder and District's payment of all sums due to IT Consultant .

- 4.2. **Term.** The term of this Agreement shall begin November 15, 2022 and shall end November 14, 2027 in accordance with the schedule. The time for completing the Services set forth in a Work Order shall be established in each individual Work Order issued to the IT Consultant.
- 4.3. **Suspension Notice.** District may suspend this Agreement at any time without penalty by written notice to IT Consultant of such suspension.

ARTICLE 5 INDEMNITY AND INSURANCE

- 5.1. **HOLD HARMLESS AND INDEMNIFICATION.** To the fullest extent permitted by law, the IT Consultant and its subconsultants shall defend (with counsel of District's choosing), indemnify, and hold harmless the District, its Board of Trustees, officers, agents, employees, representatives, and volunteers (collectively "Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, in law or equity, property damage, personal injury, damages or injuries/illnesses (including COVID-19) of any kind, including wrongful death, in any manner arising out of, pertaining to, or incident to losses including, but not limited to allegations that the IT Consultant's and/or its subconsultant's Services, software, documentation, product, output, presentation, materials or the like infringed any trademark, copyright or patent or misappropriated any trade secret of a third party, exposure of confidential information to unauthorized parties by IT Consultant's and/or its subconsultant's Services, software, or documentation, or IT Consultant's and/or its subconsultant's introduction of any unauthorized material (including but not limited to viruses, Trojans, rootkits, ransomware, blockchain, or other malware) to the District's computer network, including any cloud, storage, or extension thereof, and any alleged acts, errors or omissions, negligence, recklessness or willful misconduct of IT Consultant, its officials, officers, agents, employees, representatives, subconsultant, or volunteers, in connection with the performance of the IT Consultant's Services of this Agreement or obligations hereunder, including without limitation the payment of all consequential damages, expert witness fees, attorney's fees, and other related costs and expenses. In the event any article sold and delivered hereunder is covered by any patent, copyright, or application thereof, IT Consultant and its subconsultants shall defend, indemnify, and hold harmless South Orange County Community College District, its Board of Trustees, officers, agents, employees, representatives, and volunteers from any and all losses, costs or expenses resulting from claims, suits or judgments rendered for violation of rights under such patents, copyright, or application. Additionally, IT Consultant shall defend, indemnify, and hold harmless the District, its Board, officers, agents, employees, representatives, and volunteers from any claims or losses arising out of the infringement or misappropriation of any individual's/entity's intellectual property. IT Consultant shall reimburse the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers for all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity provided herein. This hold harmless and indemnification includes, but is not limited to, compensatory damages, regulatory fines, penalties, and extra-contractual liability. In no event shall the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers be liable for any loss of IT Consultant's business, revenues or profits, or special, consequential, incidental, indirect or punitive damages of any nature, even if the District its Board of Trustees, officers, agents, employees, representatives, and/or volunteers have been advised in advance of the possibility of such damages.
 - A. IT Consultant's and its subconsultants' obligation to indemnify the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers shall not be restricted to insurance proceeds, if any, received by the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers.
 - B. The Parties understand and agree that this shall be the sole indemnity, as defined by California Civil Code § 2772, governing this Agreement. Any other indemnity that may be attached to this Agreement as an Exhibit shall be void and unenforceable between the Parties.
 - C. Either termination of this Agreement nor completion of the acts to be performed under this Agreement shall release IT Consultant or its subconsultants from its obligations to indemnify as to any claims or causes of action asserted so long as the event(s) upon which such claim

or cause of action is predicated shall have occurred prior to the effective date of termination or completion

- 5.2. **INSURANCE.** The IT Consultant and its subconsultants shall maintain in full force and effect throughout the term of this Agreement the following policies of insurance with no less than the limits set forth herein. District may adjust, IT Consultant's required minimum coverage limits set forth herein at the commencement of a renewal term by providing IT Consultant and subconsultant (if applicable) written notice.
- A. A.M. Best Financial Rating. Policies of insurance required herein shall be issued by insurers with an A.M. Best financial rating of A:VII or better.
 - B. Admitted Carrier(s). Policies of insurance shall be afforded by insurers who are admitted - licensed to transact business in the State of California.
 - C. Workers' Compensation and Employer's Liability. In accordance with the laws of the State of California, IT Consultant shall maintain Workers' Compensation insurance and Employer's Liability coverage with not less than One Million Dollars (\$1,000,000) for Each Accident, One Million Dollars (\$1,000,000) for Disease - Each Employee, and One Million Dollars (\$1,000,000) for Disease - Policy Limit.
 - D. Commercial General Liability. Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate to cover losses including, but not limited to blanket contractual, broad form property damage, products & completed operations, personal injury, and wrongful death.
 - E. Automobile Liability. Insurance with combined single limits of not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate to cover losses involving "Any Auto".
 - F. Technology Professional Liability aka Errors and Omissions. IT Consultant and its subconsultants shall each procure and maintain throughout the term of this Agreement, Technology Professional Liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence or claim and Two Million Dollars (\$2,000,000) general aggregate to cover against liability claims/lawsuits related to the technology professional's Services as stated herein. If coverage is written on a claims made and reported form, such coverage shall contain an Extended Reporting Period (aka tail coverage) for a minimum of two (2) years following the termination date of this Agreement.
 - G. Cyber Liability (1st and 3rd Party Coverage). IT Consultant and its subconsultants shall each procure and maintain throughout the term of this Agreement, Cyber Liability insurance with limits not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. Such coverage shall protect against causes of loss including but not limited to invasion of privacy violations, breach of data, disruption of networks, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, introduction or intrusion of a virus, malware, notification, credit monitoring, breach response costs, regulatory fines and penalties, extortion and network security, and also infringement of intellectual property.
 - H. Additional Insured Endorsement. IT Consultant and its subconsultants shall each issue District an endorsement naming District, its Board of Trustees, officers, agents, employees, representatives, invitees, and volunteers as Additional Insureds to their respective Commercial General Liability and Automobile Liability insurance policies.
 - I. Primary and Non-Contributory Endorsement. IT Consultant and its subconsultants insurance coverage and limits shall be primary and any of the District's insurance coverage and limits shall be non-contributory.
 - J. Waiver of Subrogation Endorsements. IT Consultant and its subconsultants shall each issue District an endorsement waiving all rights of subrogation against the District, its Board of

Trustees, officers, agents, employees, representatives, invitees, and volunteers to their respective Commercial General Liability, Automobile Liability, and Workers' Compensation policies.

- K. No Cancellation or Material Modification. IT Consultant and its subconsultant's policies of insurance and accompanying endorsements required by this Agreement shall not be cancelled or materially modified, except upon thirty (30) days' advance written notice to District. Written notice of cancellation or material modification shall be from the insurer(s) issuing the policy(ies) of insurance to the District.
- L. Certificate(s) of Insurance and Endorsement(s). Certificate(s) and Endorsement(s) evidencing the required coverages and limits set forth herein shall be provided to District upon IT Consultant's execution of this Agreement. No Services shall commence by IT Consultant or its subconsultants until the required certificate(s) of insurance and endorsement(s) have been furnished to the District.

ARTICLE 6 COMPENSATION TO THE IT CONSULTANT

6.1. **IT Consultant Resources Hourly Rate Schedule.** The hourly billable rates include fully burdened hourly rates for each individual consultant resource identified to perform work for any assigned project. The rates identified below is set at a not to exceed amount payable for the highest qualified, experienced and skilled IT consultant resource. Based on the level of experience, qualifications and skills, a consultant resource may be assigned to a project at a rate lower than those identified below.

Consultant Role		Hourly Billable Rate
1	Cloud Administration	
2	Security Engineer	
3	Project Manager	
4	Lead Business Systems Analyst	
5	Business Systems Analyst	
6	Senior Microsoft .NET Technical Lead	
7	Senior Microsoft .NET Developer	
8	Microsoft .NET Developer	
9	Senior Database Architect	
10	Database Architect & Developer	
11	Senior QA Engineer Technical Lead	
12	Senior QA Engineer	
13	QA Engineer	

6.2. **Compensation Only Upon Work Order Execution.** IT Consultant shall not be entitled to any compensation for any services unless and until a written Work Order has been issued by the District. Upon issuance of such a Work Order, IT Consultant agrees to perform basic Services provided by this Agreement and the Work Order, and District agrees to pay IT Consultant for such Services in accordance with the fee schedule set forth above and confirmed as a not to exceed price in the Work Order.

The District will not pay any reimbursable expenses of the IT Consultant and the total contract not to exceed amount shall include all costs for the services rendered.

District shall not be liable to IT Consultant for any costs or expenses paid or incurred by IT Consultant in performing services for District, unless otherwise specifically stated in this Agreement.

The District may withhold, or on account of subsequently discovered evidence, nullify the whole or a part of any payment to such extent as may be necessary to protect the District from loss, including costs and attorneys' fees, on account of:

1. Defective or deficient work product not remedied;
2. Failure of the IT Consultant to make payments properly to its employees or sub-Consultants; or
3. Failure of IT Consultant to perform its services in a timely manner so as to conform to Project schedule.

6.3. **Price Inclusions.** The rates identified in section 6.1 above are inclusive of personnel expenses (inclusive of all benefits and burdens), fees and personnel expenses of any sub-consultant or subcontractor to the IT Consultant, including all travel costs, insurance and all other overhead/administrative expenses or costs associated with performance of the Services, except for Allowable Reimbursable Expenses approved and authorized in this Agreement or any Work Order. At no time shall meals be considered a reimbursable expense.

6.4. **Bi-Monthly Billing Statements.** IT Consultant shall submit bi-monthly billing invoices to the District for payment of Services, authorized (approved in writing) Additional Services, and previously approved and allowable Reimbursable Expenses performed or incurred in the immediately prior month in a format previously approved by the District. Previously approved and allowable Reimbursable Expenses shall be itemized and evidence shall be provided of the cost or value of any Allowable Reimbursable Expense costs for which payment is requested by IT Consultant.

6.5. **Payment.** District will make payment to IT Consultant of undisputed amounts due for Services, authorized Additional Services, and Allowable Reimbursable Expenses on a monthly basis with net thirty (30) days terms. Payments are due and payable upon receipt of the IT Consultant's invoice. Invoices shall be on a form and in the format approved by the District.

6.6. **Invoices.** IT Consultant to send invoices to AccountsPayable@socccd.edu or mail to South Orange County Community College District, 28000 Marguerite Parkway, Mission Viejo, CA 92692, Attn: Accounts Payable. Payment shall be net 30 days upon satisfactory completion and acceptance of Services. If payment term differs, it must be noted in Article 3. To ensure prompt and accurate payment, all invoices related to this agreement shall reference the following Agreement Number: INSERT AGREEMENT NUMBER

All District-authorized expenses shall be documented with original receipts and shall be pre-approved in writing by District, unless such expenses are specifically authorized by this Agreement. Invoices shall include the invoice date, date(s) of service(s), District's Purchase Order number, and IT Consultant's Taxpayer Identification Number. Invoices shall be paid on a "net 30-day basis" for Work satisfactorily rendered (as determined by the District) pursuant to this Agreement. An invoice cannot be paid unless this Agreement has been signed by IT Consultant and has been properly executed by District, and IT Consultant has submitted a completed Vendor Form/Substitute Form W-9 to District's Contract and Procurement Services Department.

6.7. **Withholding Payment.** The District may withhold or deduct from amounts otherwise due to IT Consultant hereunder if IT Consultant shall fail to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after IT Consultant has fully cured its failure of performance, less costs, damages or losses sustained by the District as a result of such failure of performance of a material obligation hereunder.

6.8. **Payment in Full.** This compensation shall be compensation in full for all services performed by the IT Consultant under the terms of this Agreement and assigned Work Order, except where additional compensation is agreed upon between the IT Consultant and District in writing as provided for as

additional services.

- 6.9. **Reimbursable Expenses** incurred by the IT Consultant and IT Consultant's employees in the interest of the Project shall have prior District written approval before incurred and records of such expenses shall be provided to District for the District's review. The District shall not be liable to IT Consultant for any costs or expenses paid or incurred by IT Consultant in performing services for District, except reimbursable expenses that have been pre-approved in writing.
- 6.10. **Non Waiver of Rights**. Neither the District's review, approval of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and IT Consultant shall remain liable to the District in accordance with applicable law for all damages to the District caused by IT Consultant's failure to perform any of the services furnished under this Agreement.
- 6.11. **Materials And Expenses**. IT Consultant shall furnish, at their own expense, all labor, materials, equipment, supplies and other items necessary to complete the Work to be provided pursuant to this Agreement. District shall not be liable to IT Consultant for any costs or expenses paid or incurred by IT Consultant in performing Work for District.
- 6.12. **Transportation**. IT Consultant hereby acknowledges and understands that it is their responsibility to arrange for transportation to provide all services necessary and/or required by this Agreement and is solely responsible for all associated costs. The District is in no way responsible for, nor does District assume any liability for, any injury or loss, which may result from IT Consultant's transportation for which the IT Consultant shall indemnify the District in accordance with the Hold Harmless and Indemnification provision herein.
- 6.13. **Taxes**. IT Consultant acknowledges and agrees that it is the sole responsibility of IT Consultant to report as income its compensation received from District and to make the requisite tax filings and payments to the appropriate federal, state or local tax authority. No part of IT Consultant's compensation shall be subject to withholding by District for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation.
- 6.14. **California State Tax Withholding for Nonresidents Of California**. It is mutually understood that if IT Consultant is a nonresident of California, which may include California nonresidents, corporations, limited liability companies, non-profits, and partnerships that do not have a permanent place of business in the State of California, the District is obligated to abide by California Franchise Tax Board (FTB) withholding requirements. The District is required to withhold from all payments or distributions of California source income made to a nonresident when payments or distributions are greater than One Thousand Five Hundred Dollars (\$1,500) for the calendar year unless the District receives authorization for a waiver or a reduced withholding rate from FTB. As of January 1, 2008, the standard withholding amount for all payments to nonresident California contractors is Seven Percent (7%). District will deduct the amount ordered by the State of California from the payment hereunder and will pay such amount directly to the IT Consultant's California State Income Tax Account, settlement of which must be made by IT Consultant directly with the State of California through Withholding Coordinator, Franchise Tax Board, P.O. Box 651, Sacramento, California, 95812-0651; telephone (916) 845-6262. Completion and submission of the appropriate form shall be the obligation of the nonresident IT Consultant and IT Consultant shall defend, indemnify, and hold harmless the District against any loss, expense, or liability arising out of IT Consultant's acts or omissions with respect to this nonresident requirement. IT Consultant shall provide all necessary documentation and information to help District comply with all tax requirements related to California nonresidents

ARTICLE 7 IT CONSULTANT'S WORK PRODUCT

- 7.1. **District Ownership**. All work and deliverables provided as a result of the Services provided under

this Agreement and all associated Work Orders shall be and remain the property of the District. Such work and deliverables supplied as herein required shall be the property of the District whether or not the work for which they were made is executed. IT Consultant grants to District the right to reuse all or part of the aforementioned work and deliverables at its sole discretion. The District is not bound by this Agreement to employ the services of IT Consultant in the event such work and deliverables are reused. IT Consultant grants to the District the right to copy, use, modify, and reuse any and all copyrights and designs embodied in the work and deliverables prepared or caused to be prepared by the IT Consultant pursuant to this Agreement.

- 7.2. **Electronic Copy of Documents.** The IT Consultant shall perform the work under this agreement using District approved software and shall deliver electronic copies per the District's direction upon completion of the Project requirements. If work is terminated prior to Project completion, a copy of the work completed to date shall be provided to the District.

ARTICLE 8 TERMINATION

- 8.1. **Termination for Convenience.** District may, at any time, with or without reason, terminate this Agreement and compensate IT Consultant only for services satisfactorily rendered to the date of termination. 15 day written notice by District shall be sufficient to stop performance of services by IT Consultant. Notice shall be considered applicable as of the date established on the termination notice and deemed given when received by the IT Consultant or no later than three days after the day of mailing, whichever is sooner.
- 8.2. **Termination for Cause.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this Agreement by the IT Consultant; or (b) invasion of privacy violations, breach of data, disruption of networks, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, introduction or intrusion of a virus, malware, extortion and network security, and also infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress; (c) any act by IT Consultant exposing the District to any liability including those caused to others for personal injury or property damage; or (d) IT Consultant is adjudged a bankrupt, IT Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of IT Consultant's insolvency. Written notice by District shall contain the reasons for such intention to terminate and unless within ten (10) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the ten (10) days cease and terminate. In the event of such termination, the District may secure the required services from another contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Written notice by District shall be deemed given when received by the other party or no later than three days after the day of mailing, whichever is sooner.
- 8.3. **Termination by Either Party.** This Agreement may be terminated without cause by the District upon not less than 15 days written notice to the IT Consultant. This Agreement may be terminated by either party upon not less than 15 days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- 8.4. **Suspension of Project.** The District may suspend this Agreement at any time without penalty by written notice to IT Consultant of such suspension. The Suspension Notice shall set forth the reason for the suspension, the anticipated term of the suspension and shall be provided to the IT Consultant not less than fifteen days prior to the suspension date. If the Project is suspended by the District for more than ninety consecutive days, the IT Consultant shall be compensated for services satisfactorily performed prior to such suspension. When the Project is resumed, the IT Consultant's compensation shall be equitably adjusted to provide for expenses incurred in the

interruption and resumption of the IT Consultant's services.

- 8.5. **Abandonment of Project.** If the District abandons the Project for more than ninety consecutive days, the IT Consultant shall be compensated for services satisfactorily performed prior to the abandonment.
- 8.6. **IT Consultant Compensation.** The IT Consultant shall be compensated for services satisfactorily performed prior to a termination which is not the fault of the IT Consultant. The District shall pay the IT Consultant only the fee associated with the services provided, since the last billing and up to the notice of termination.
- 8.7. **Liability for District Damages.** In the event of termination due to the fault of IT Consultant, IT Consultant shall receive compensation due for services satisfactorily rendered prior to the date of termination. The IT Consultant is liable for all damages suffered by the District due to IT Consultant's failure to perform as provided in the Agreement.
- 8.8. **Effect of Termination.** If this Agreement is terminated as provided in this Section, District may require IT Consultant to provide all finished or unfinished documents, data, programming source code, reports, or any other items prepared IT Consultant in connection with the performance of Services under this Agreement. IT Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

ARTICLE 9 DISPUTES, MEDIATION AND ARBITRATION

- 9.1. **Work to Continue.** In the event of a dispute between the parties as to performance of the work, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of the dispute, IT Consultant agrees to continue to diligently perform and provide services hereunder until completion of the work. If the dispute is not resolved, IT Consultant agrees it will neither rescind this Agreement nor stop the progress of the work. The District and IT Consultant agreed that, in the event that a dispute comes to litigation, each party will bear its own legal expenses.
- 9.2. **Mediation Requirements.** All claims, disputes or controversies arising out of or relating to the Project or to this agreement or the breach thereof shall be first attempted to be resolved through mediation.

ARTICLE 10 DISTRICT'S RESPONSIBILITIES

- 10.1. **District Provided Information.** The District shall provide to the IT Consultant full information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria.
- 10.2. **District Representative.** The District shall appoint one or more representatives authorized to act on the District's behalf with respect to the Project. The District or its authorized representative(s) shall render decisions in a timely manner pertaining to documents submitted by the IT Consultant. IT Consultant shall consult with authorized employees, agents, and representatives of District relative to the Project. However, IT Consultant shall accept directives only from District's designated representative(s) and not from other District employees or consultants. The District shall notify IT Consultant in writing if, at its sole option, it makes a change in the District representative(s). Unless modified by written notice by the District to the IT Consultant, the District Representative(s) are:

Gerlie Jeltema, Director of Information Technology

Jeff Dorsz, Executive Director of Information Technology and Security

- 10.3. **District Notification.** The District shall give prompt written notice to the IT Consultant if the District

becomes aware of any fault or defect in the Project or nonconformance with the Project intent. However, the District's failure or omission to do so shall not relieve the IT Consultant of his/her responsibilities hereunder and the District shall have no duty to observe, inspect or investigate the services contemplated in this agreement.

- 10.4. **Project Description.** The District shall furnish a description of the Project as required.
- 10.5. **Reliable Information.** The IT Consultant may rely on the information provided by District but only to the extent such reliance is consistent with IT Consultant's obligations under this Agreement.

ARTICLE 11 TRANSITION ASSISTANCE

- 11.1. If applicable, IT Consultant will provide transition assistance ("Transition Assistance") to support District's transition from its current and future providers. Transition Assistance will be provided by IT Consultant as detailed below at no additional cost to District. Transition assistance will be provided by IT Consultant at District at mutually agreeable dates and times.
1. IT Consultant's Project Manager shall coordinate with District's Project Manager, and they shall develop a mutually agreeable transition plan and schedule.
 2. In connection with IT Consultant's Transition Assistance, District will provide information, data, computer access and time, work space, forms, data entry and telephone service and personnel reasonably necessary to assist IT Consultant consistent with District's policies and procedures.

ARTICLE 12 MISCELLANEOUS

- 12.1. **Equal Opportunity/Non-Discrimination.** IT Consultant shall not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment; or discriminate in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, disability, medical condition, marital status, veteran status, or any other category protected by law.

IT Consultant shall ensure that all services and benefits rendered to the District, its representatives, IT Consultants/contractors and volunteers are provided free of any form of harassment and without regard to race, color, religion, sex, age, disability, medical condition, marital status, national origin, veteran status, or any other category protected by law. IT Consultant shall comply with the Americans with Disabilities Act and the Rehabilitation Act of 1973, as amended

- 12.2. **Compliance with Applicable Laws, Policies, Procedures, Rules & Regulations.** IT Consultant shall comply with District's policies, procedures, rules, regulations and/or guidelines that include but are not limited to a smoke, alcohol, and controlled substances free campus, conflict of interest, workplace violence, code of conduct, harassment and discrimination prevention and drug-free environment.

IT Consultant agrees to comply with all federal, state and local laws, rules, regulations, and ordinances that are now and may in the future become applicable to IT Consultant, IT Consultant's business, equipment and personnel engaged in Work covered by this Agreement or accruing out of the performance of such Work. Additionally, IT Consultant shall strictly comply with all health and safety guidelines consistent with Cal/OSHA and CDC.

COVID-19 Related Responsibilities. IT Consultant shall respond to all potential COVID-19 exposure events immediately. If a possible COVID-19 infection or potential exposure event occurs

involving IT Consultant and any of its employees performing Work on District property pursuant to the terms of this Agreement, IT Consultant shall immediately notify the District. While the confidentiality of all medical conditions must be maintained in accordance with applicable law, the District reserves the right to inform any District staff, employees, students, and/or visitors that an unnamed individual has been diagnosed with COVID-19 if any of the District's staff, employees, students, or visitors might have been exposed to the disease so such individual(s) may take measures to protect their own health.

Contractor shall ensure that its employees will at all times comply with the District's current [COVID-19 Contractor Protocols](#).

Compliance with Economic Sanctions Imposed in Response to Russia's Invasion of Ukraine. IT Consultant shall comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including with respect to, but not limited to, the federal Executive Order 14065 and the sanctions identified on the U.S. Department of the Treasury website. IT Consultant shall comply with any sanctions imposed under state law, including with respect to, but not limited to, Executive Order N-6-22 from the State of California's Executive Department:

<https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>

- 12.3. **Profanity Prohibited.** Profanity, including, but not limited to, racial, ethnic, or sexual slurs or comments which could be considered harassment on any District property is prohibited.
- 12.4. **Mandatory Dress Code.** Appropriate attire is mandatory. Therefore, clothing with inappropriate language/suggestions/gestures graphics, indecent exposure, tank tops, cut-offs, and shorts are not allowed. Additionally, what is written or pictured on clothing must comply with the requirements of acceptable language as stated in the above section.
- 12.5. **Trademark/Logo Use.** IT Consultant must obtain written approval from District's Public and Government Affairs, Public Information Office ("PIO") to use the District's name and/or logos in any advertisements, promotions, press releases or other media. In the event permission is granted, PIO will furnish IT Consultant with camera-ready artwork for such use. District, at its sole discretion, may limit or otherwise place conditions on IT Consultant's use of District's name, and/or logos in which case such limitations shall be incorporated into this Agreement. IT Consultant shall not revise, change, or otherwise alter any material related to District's name and/or logo without written consent from District
- 12.6. **Originality of Services.** IT Consultant agrees that all material produced by the IT Consultant and delivered to District hereunder shall be original, except for such portion as is included with permission of the copyright owners thereof, that it shall contain no libelous or unlawful statements or materials, and will not infringe upon any copyright, trademark, patent, statutory or other proprietary rights of others and that it will hold harmless the District, its Board of Trustees, officers, agents, employees, and volunteers from any costs, expenses and damages resulting from any breach of this representation.

IT Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all rights, titles and interests in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. IT Consultant consents to use of IT Consultant's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium.

- 12.7. **Rights To Data.** IT Consultant grants to the District the right to publish, translate, reproduce,

deliver, use and dispose of, and to authorize others to do so, all data, including reports, drawings, blueprints, and technical information resulting from the performance of work under this Agreement.

- 12.8. **Personal Information.** During the course of this Agreement, should IT Consultant come into possession of any personal information that is considered sensitive, nonpublic personal data or contains personally identifiable information related to District's users, which include but are not limited to employees, students, and volunteers, IT Consultant shall immediately notify the District. IT Consultant shall not disclose this information to any third party under any circumstances.
- 12.9. **Confidentiality.** IT Consultant shall hold in trust for the District, and shall not disclose to any person, any confidential information. Confidential information is information, which is related to the District's research, development, trade secrets and business affairs; but does not include information, which is generally known or easily ascertainable by nonparties through available public documentation.

IT Consultant shall advise the District of any and all materials used, or recommended for use by IT Consultant to achieve the project goals, that are subject to any copyright restrictions or requirements. In the event IT Consultant shall fail to so advise the District and as a result of the use of any programs or materials developed by IT Consultant under this Agreement the District should be found in violation of any copyright restrictions or requirements, or the District should be alleged to be in violation of any copyright restrictions or requirements, IT Consultant agrees to indemnify, defend and hold harmless, District against any action or claim brought by the copyright holder.

Notwithstanding the above requirements, to the extent any records or documents associated with the IT Consultant's services and/or the project are or become public records, they shall be subject to disclosure pursuant to the Public Records Act and applicable California law.

- 12.10. **Materials.** IT Consultant shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Contract unless otherwise specifically stated in the Contract. IT Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession.
- 12.11. **Background Check.** IT Consultant hereby certifies that IT Consultant has never been charged with a felony, including any "violent felony" as defined in California Civil Code section 667.5(c) or serious felony defined by California Civil Code section 1192.7 prior to, or on the date of, this Agreement. IT Consultant shall notify District in writing immediately if IT Consultant is charged with any felony during the term of this Agreement in which case District may terminate this Agreement immediately. IT Consultant further hereby authorizes the District or other organizations to conduct a comprehensive review of his/her background upon District's request. IT Consultant hereby consents to the background check to the fullest extent permitted by law. IT Consultant agrees to indemnify, defend and hold harmless the District from any claims, damages, harms, and costs, including legal and processing fees arising from the requirements of this Section, including any such issue arising from any felony IT Consultant has been charged with, or is charged with, during this Agreement. Failure to complete any required step to provide the background check and information required herein upon District request within thirty (30) days shall be grounds for termination of this Agreement.

- 12.12. **Certification Regarding the California Penal Code Section 290.** By executing this Agreement, IT Consultant agrees to comply with the rules and regulations of the Sex Offender Registration Act, California Penal Code Section 290.95. IT Consultant certifies and understands that every person required to register under Section 290 shall disclose his or her status as a registrant, upon application or acceptance of a position, to that person, group, or organization. Furthermore, no person who is required to register under Section 290 because of a conviction for a crime where the victim was a minor under sixteen (16) years of age shall be an employer, employee, or independent IT Consultant, or act as a volunteer with any person, group, or organization in a capacity in which the registrant would be working directly and in an unaccompanied setting with minor children on more than an incidental and occasional basis or have supervision or disciplinary power over minor children. A violation of this Article is a misdemeanor punishable by imprisonment in a county jail for not exceeding six (6) months, by a fine not exceeding One Thousand Dollars (\$1,000), or by both that imprisonment and fine, and a violation of this Article shall not constitute a continuing offense.
- 12.13. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR OTHER INELIGIBILITY** (Applicable to all agreements funded in part or whole with federal funds).
- A. By executing this contractual instrument, IT Consultant agrees to comply with applicable federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Order 12549 (29 C.F.R. Part 98) (see Appendix 15).
- B. By executing this contractual instrument, IT Consultant certifies to the best of its knowledge and belief that it and its principals:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 2. Have not, within a three-year period preceding the execution of this contractual instrument, been convicted of, or had a civil judgment rendered against them, for: (a) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) or private transaction or contract; (b) Violation of Federal or State antitrust statutes; (c) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or (d) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects IT Consultant's present responsibility;
 3. Are not presently indicted for, or otherwise criminally or civilly charged by any government entity (Federal, State or Local), with commission of any of the offenses enumerated in b.2) above, of this certification;
 4. Have not, within a three-year period preceding the execution of this contractual instrument, had one or more public transaction (Federal, State or Local) terminated for cause or default;
 5. Shall not, except as otherwise provided under applicable federal regulations, knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded by any federal department or agency from participation in such transaction; and
 6. Include in all lower tier covered transactions, and all solicitations for covered transactions, provisions substantially similar to those set forth herein
- 12.14. **Audit and Inspection of Records.** At any time during the normal business hours and as often as District may deem necessary, IT Consultant shall make available to District for examination at District's place of business as specified herein, all data, records, investigation reports and all other

materials respecting matters covered by this Contract and IT Consultant will permit the District to audit, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Contract. Pursuant to and in accordance with the provisions of Government Code Section 8546.7 or any amendments thereto, all books, records, and files of the District and the IT Consultant, including, but not limited to the costs of administration of this Agreement, shall be subject to examination and audit of the State Auditor at the request of the District or as part of any audit of the District for a period of three (3) years after final payment is made under this agreement. During this time, IT Consultant shall maintain accounting records and make them available upon request of the District for reproduction or inspection.

- 12.15. **Confidentiality and Use of Information.** IT Consultant shall hold in trust for the District, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the District's research, development, trade secrets and business affairs; but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.

IT Consultant shall advise the District of any and all materials used, or recommended for use by IT Consultant to achieve the project goals, that are subject to any copyright restrictions or requirements. In the event IT Consultant shall fail to so advise the District and as a result of the use of any programs or materials developed by IT Consultant under this Contract the District should be found in violation of any copyright restrictions or requirements, or the District should be alleged to be in violation of any copyright restrictions or requirements, IT Consultant agrees to indemnify, defend and hold harmless, District against any action or claim brought by the copyright holder.

Notwithstanding the above requirements, to the extent any records or documents associated with the IT Consultant's services and/or the project are or become public records, they shall be subject to disclosure pursuant to the Public Records Act and applicable California law.

- 12.16. **Non Waiver.** Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or inequity. The failure of District or IT Consultant to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

- 12.17. **Public Retirement System Retirees.** IT Consultant must disclose to District if IT Consultant has retired from the California State Teachers' Retirement System ("CalSTRS") or the California Public Employees' Retirement System ("CalPERS"). Pursuant to California Education Code Section 24214 and 24214.5, there are postretirement limitations on earnings if IT Consultant has retired from CalSTRS and hours worked limitations if IT Consultant has retired from CalPERS. If IT Consultant has retired from either CalSTRS or CalPERS, IT Consultant should be aware that the District is required to report all payments under this and any additional Agreements in any given year (July 1 – June 30).

- 12.18. **Employment with Public Agency.** IT Consultant, if an employee of another public agency, agrees that IT Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement. Additionally, No member, officer or employee of the District during tenure or for one year thereafter, shall have any interest direct or indirect, in this Agreement or the proceeds thereof.

- 12.19. **Representations And Warranties.** IT Consultant on its own behalf and on behalf of all its employees, makes the following certifications, representations, and warranties for the benefit of the District. In addition, IT Consultant acknowledges and agrees that the District, in deciding to engage IT Consultant pursuant to this Agreement, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this

Agreement and the course of IT Consultant's engagement hereunder:

IT Consultant and its employees are qualified in all respects to provide to the District all of the services contemplated by this Agreement and, to the extent required by any applicable laws, IT Consultant and its employees have all licenses, permits, qualifications, and/or governmental approvals that are legally required to perform the Services as described herein. Such licenses, permits, qualifications, and/or governmental approvals shall be maintained throughout the term of this Agreement.

IT Consultant, in providing the services and in otherwise carrying out its obligations to the District under this Agreement, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws. IT Consultant shall be liable for all violations of such laws and regulations in connection with the services as described herein.

- 12.20. **Use of Subconsultants**. The obligations of the IT Consultant pursuant to this Agreement shall not be assigned by the IT Consultant without the express written approval of the District. IT Consultant must obtain District's prior written approval to use any subconsultants while performing any portion of this Agreement and such approval may be conditioned on approval of the subcontract between IT Consultant and subconsultants. Such approval must include approval of the proposed subconsultant and the terms of compensation. If written approval for IT Consultant's use of a subconsultant is provided by the District, IT Consultant warrants that said subconsultant shall have sufficient skill and experience to perform the services assigned to them. IT Consultant further represents that its subconsultant have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. District retains the right to obtain copies of subconsultant's insurance coverage at any time. Nothing in this Article shall be interpreted as creating a contractual relationship between District and any approved subconsultant. Notwithstanding District's approval of any subconsultant's contract, IT Consultant shall remain solely responsible for any harm, damage, or claim arising from any subconsultant's acts or omissions as set forth in the Hold Harmless and Indemnification provision herein.
- 12.21. **Assignment**. This Agreement is not assignable by IT Consultant, either in whole or in part, nor shall the IT Consultant further contract for the performance of any of its obligations hereunder, without the prior written consent of District.
- 12.22. **Governing Law**. The terms and conditions of this Agreement shall be governed by the laws of the State of California with jurisdiction/venue in Orange, California.
- 12.23. **Force Majeure**. The IT Consultant and District are excused from performance during the time and to the extent that they are prevented from obtaining, performing any act or rendering any services required under this Agreement by a Force Majeure Event. If a Force Majeure Event caused the failure or delay beyond the Parties' control and which by the Parties' exercise of due diligence could not reasonably have been avoided, an extension of contract times in an amount equal to the time loss due to such delay shall be the IT Consultant's sole and exclusive remedy for such delay. A "Force Majeure Event" shall mean events or circumstances occurring by acts of God, such as tornadoes, lightning, earthquakes, hurricanes, floods, or other natural disasters; epidemics; pandemics; quarantine restrictions; fire; strikes; lock-out; commandeering of materials, products, plants or facilities by the government; terrorist attacks; wars; riots; civil disturbances; or governmental acts, including sanction, embargo, and import or export regulation, or order; when satisfactory evidence thereof is presented to the other party, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.
- 12.24. **Marginal Headings; Captions**. The titles of the various Paragraphs of the Agreement and the Articles of these Conditions are for convenience of reference only and are not intended to and in no way shall enlarge or diminish the rights or obligations of IT Consultant and District hereunder.

- 12.25. **Non-Assignment.** The District and IT Consultant, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this Agreement with respect to the terms of this Agreement. The obligations of the IT Consultant pursuant to this Agreement shall not be assigned by the IT Consultant. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the District or IT Consultant. The sale or transfer of a majority membership interest in IT Consultant firm or the admission of new member to the IT Consultant firm which causes there to be a change in majority ownership and / or control of IT Consultant firm shall be deemed an assignment for purposes of this Agreement. Nothing contained in this Agreement is intended to make any person or entity who is not a signatory to the Agreement a third party beneficiary of any right created by the Agreement or by operation of law.
- 12.26. **Notifications.** All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served requiring signature acknowledging receipt, or if mailed, on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section.
- 12.27. **Communications** between the parties shall be sent to the following addresses:
- | | |
|----------------------------------|----------------|
| District | IT Consultant |
| Priya Jerome | INSERT NAME |
| South Orange County | INSERT FIRM |
| NAME. Community College District | |
| 28000 Marguerite Parkway | INSERT ADDRESS |
| Mission Viejo, CA 92692 | INSERT ADDRESS |
- 12.28. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.
- 12.29. **Interpretation.** In interpreting this Agreement, it shall be deemed to have been prepared by the Parties jointly, and no ambiguity shall be resolved against District on the premise that it or its attorneys were responsible for drafting this Agreement or any provision hereof. The captions or heading set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any Articles or other provisions of this Agreement. Any reference in this Agreement to an Article, unless specified otherwise, shall be a reference to an Article of this Agreement
- 12.30. **Conflict Of Interest.** IT Consultant hereby represents, warrants and covenants that (i) at the time of execution of this Agreement, IT Consultant has no interest and shall not acquire any interest in the future, whether direct or indirect, which would conflict in any manner or degree with the performance of services under this Agreement; (ii) IT Consultant has no business or financial interests which are in conflict with IT Consultant's obligations to the District under this Agreement; and (iii) IT Consultant shall not employ in the performance of services under this Agreement any person or entity having any such interests
- 12.31. **Accessibility of Information and Communication Technology.** The IT Consultant hereby warrants that the goods or services to be provided to the District comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. S794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 194. The IT Consultant agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. IT Consultant further agrees to indemnify and hold harmless the District from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this order or

Agreement.

IT Consultant is responsible for following all Federal and California accessibility laws set forth under Sec 508 of the Rehabilitation Act of 1973, passed in 2000 and updated in 2017 and California Government Code Section 7405. All materials and Information and Communication Technology (ICT) produced or provided by the IT Consultant, as part of this contract must meet the standards set forth under these laws. These requirements include, but are not limited to, closed captioning of all videos or portions of videos; all presentations; training materials; curriculum; computers; and all other ICT as defined under the law, must be created and delivered in a manner where they meet accessible requirements. All websites developed and maintained must be accessible, built to the most current and highest Web Content Accessibility Guidelines (WCAG), and be delivered with documentation allowing the District to certify it as accessible and in compliance with California Government Code Sections 7405 and 11135. IT Consultant is responsible for all claims and expenses borne by the District, which arise out of the work under this contract, found to be non-compliant with Federal and California Laws. These costs include but are not limited to legal costs, court costs, and costs for remediation of work produced.

- 12.32. **Supersedes.** This Agreement constitutes the entire agreement and understanding between the parties to this Agreement and supersedes all prior and contemporaneous negotiations and understandings between the parties whether oral or written, expressed or implied
- 12.33. **Entire Agreement / Amendment.** The Agreement documents consist of this Agreement, any exhibits attached to or referenced herein, and all amendments and/or modifications issued in writing, duly approved or ratified by District's Board of Trustees, and executed by the Parties shall be interpreted to the benefit of the District. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (a) provisions set forth in this Agreement, (b) provisions set forth in any referenced attachments or exhibits to this Agreement attached or incorporated herein by reference. However, the Parties understand and agree that the service specified in the Agreement and any provisions set forth in any referenced attachments or exhibits to this Agreement is intended to cooperate and be complementary; provided further, however, that in the event of a conflict between the Agreement and the provisions set forth in any referenced attachments or exhibits, the Agreement shall control, unless the provisions set forth in any referenced attachments or exhibits to this Agreement provides the District with greater benefits or more expansive services in which case the provisions set forth in any referenced attachments or exhibits to this Agreement shall compliment the terms of this Agreement.
- 12.34. **Authority To Execute.** The individual(s) executing this Agreement on behalf of the IT Consultant is/are duly and fully authorized to execute this Agreement on behalf of IT Consultant and to bind the IT Consultant to each and every term, condition, and covenant of this Agreement.
- 12.35. **Approval By District's Board Of Trustees.** Pursuant to Education Code Section 81655, this Agreement is not valid and does not constitute an enforceable obligation against District unless and until District's Board of Trustees has approved or ratified this Agreement as evidenced by a motion duly passed and adopted by the Board of Trustees

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the Parties, the day and year signed below.

District

IT Consultant

South Orange County Community College District

INSERT FIRM NAME

Ann-Marie Gabel
Vice Chancellor, Business Services

INSERT NAME
INSERT TITLE

(Date)

(Date)

EXHIBIT C - STANDARDS AND PRACTICES FOR DEALING WITH DEFECTS AND BILLING

- A. Standards and practices for identifying and resolving billing rate schedules for Software Deliverables and Module defects including regression bugs (both pre-release and post-release) and definitions of “mission critical” and “non-mission critical” bugs and timelines required for IT Consultant to fix each. The major intents of EXHIBIT C are:
1. To provide definitions, criteria and processes for reviewing and resolving two types of post-production issues with software developed by IT Consultant:
 - a. mission critical issues
 - b. non-mission critical, but important issues
 2. Establish acceptable levels of responsiveness by IT Consultant to repair post-production, mission critical software issues
 3. To define a process and set of criteria for resolving claims for financial remuneration in consideration of mission-critical defects in work product found within a limited time after the work product is in full production release.

B. EXHIBIT C applies only when all of the following criteria are true:

- Software components and systems were designed, programmed and implemented by IT Consultant pursuant to this Agreement.
- Defect in software identified by District was caused by an agent of IT Consultant.
- Both District and IT Consultant agree that the identified defect in software meets the criteria stated herein for a “mission critical defect”.
- Defect in software was identified by District more than 10 calendar days and less than 60 calendar days after the software was released to full production release.
- Defect in software is not explained by or caused by the requirements, business rules or design guidance provided to IT Consultant by District.

C. Definitions and Examples

“Mission Critical Defect” shall mean any flaw in the software work product produced by IT Consultant pursuant to this Agreement that vitally impairs ability for District to meet its operational mission as it relates to the intended purpose of said software, and whereupon such flaw is not explained by or caused by the requirements, business rules or design guidance provided to IT Consultant by District.

“Full Production Release” shall mean the single event or moment in time when the software system is made permanently available (and not in a pilot test) to all intended system users for real use in real operation procedures and transactions.

Examples of mission critical defects might include:

- SIS Student Accounts module failing to properly calculate account balance, leading to inaccurate financial records for many students.
- SIS Student Records module that corrupts or loses student grades, names, address, residency status or other similarly critical data elements that are key to records management and State or MIS Reporting requirements.

Examples of issues that are not mission critical defects might include:

- SIS Student Grades module displaying typographical errors in the descriptive text shown on the faculty grade submission web page.
- SIS Student Accounts module failing to properly calculate account balance for one student transaction during an academic term (e.g. 1 in 35,000).
- A web page that “does not look the way I would prefer”.
- A set of web pages that do not flow the way some users would prefer, but is capable of

- performing the intended function, given the proper manual process and user willingness to operate the software.
- Any feature that functions as specified by the appropriately designated design group, but does not function according to inconsistent, changed or improved thinking.

Defect Escalation Process

District will notify IT Consultant in writing, and within two (2) business days of discovery, of any post-release defects that District considers to meet the criteria for remuneration as set forth in EXHIBIT C. District will present the necessary information to IT Consultant to assist in evaluating the defect for EXHIBIT C consideration. For the purposes of repairing any identified post-release mission critical defect, IT Consultant and District will proceed with the escalated defect repair processes without waiting for billing resolution decisions and IT Consultant will respond to reported mission critical defects reported within the first 60 days after full production release with IT Consultant to begin investigation and repair within 12 hours during the normal business week and within 24 hours on holidays and weekends. For the purposes of determining any alterations in IT Consultant billing, within 30 days of written escalation, District and IT Consultant will review and mutually decide upon the disposition of any defect identified by District to be a post-release mission critical defect.

Timely Resolution

Once notified by District of a post-release mission critical defect, IT Consultant shall either resolve the affected defect within five (5) business days from formal notification, or (in the event that said defect cannot be repaired in that time) provide a written justification for the delay and advise District of alternative measures that IT Consultant and/or District can take in a more timely manner. If IT Consultant fails to provide a resolution or an alternative measure within this time window, IT Consultant will discount contracted bill rate to 20% for any efforts expended by IT Consultant in connection with resolving the affected defect.

Billing Effects

For any defects that are escalated as described herein and are mutually disposed by District and IT Consultant to meet the criteria described herein, and only if IT Consultant fails to provide a timely response, the following billing ramifications will take effect:

- IT Consultant will discount the contracted hourly billing rate by 20% for any efforts expended by CONSULTANT in connection with resolving the affected defect, commencing from the date that IT Consultant received notification from District of the Defect Escalation.
- IT Consultant will provide to District a report of time spent by IT Consultant in connection with resolving the affected defect.