

MEMORANDUM OF UNDERSTANDING

between
Public School Districts operating within San Diego County (“County LEAs”)
and the
San Diego County Office of Education (“SDCOE”)

THIS MEMORANDUM OF UNDERSTANDING (“**MOU**”), effective as of the Effective Date, September 1, 2017 is entered into by and between the public school districts organized and existing under the laws of the State of California, operating within San Diego County, that utilize the SDCOE PeopleSoft system (“**County LEAs**”), and the San Diego County Office of Education (“**SDCOE**”), for the mutual benefit of the Parties regarding the resolution of concerns related to SDCOE’s implementation of a county-wide Enterprise Resource Planning system (“**MITI Implementation**”). County LEAs and SDCOE may be referred to in this MOU collectively as the “Parties” or individually as a “Party” or by name.

RECITALS

1. WHEREAS, the mission of the SDCOE, as a world-class educational leader and trusted partner, is to transform public education and guarantee high levels of student achievement. In partnership with local school districts and the global learning community, the SDCOE will research and apply innovative 21st century practices; leverage resources; develop strategic alliances; inspire powerful leadership; and provide exemplary customized services to districts, communities and the students in all County Office-operated programs;
2. WHEREAS, the County LEAs endeavor to provide high quality educations to their students in welcoming and engaging environments;
3. WHEREAS, County LEAs participate in and receive software and services from SDCOE for personnel, payroll, financial, and additional related matters;
4. WHEREAS, SDCOE endeavored to provide a county-wide, fully functioning, integrated Enterprise Resource Planning solution to replace existing software systems throughout San Diego County for and with County LEAs;
5. WHEREAS, in order to commence its MITI Implementation, SDCOE and County LEAs entered into a series of Memorandums of Understanding and Memorandums of Agreement (“Prior MITI MOUs”), attached collectively hereto as Exhibit A and incorporated herein by this reference;
6. WHEREAS, pursuant to the Prior MITI MOUs, each of the County LEAs have been required to contribute two forms of payment to SDCOE: initial one-time implementation costs and continuing annual maintenance, upgrade, and support fees;
7. WHEREAS, the SDCOE MITI Implementation continues to develop functionality to be fully implemented as promised in the original ERP Scope included in County LEAs Prior MITI MOUs;

8. WHEREAS, the SDCOE did not foresee or forewarn County LEAs that there may be unanticipated additional costs associated with the MITI Implementation, such as the funding of new positions, training, and overtime expenses to ensure compliance with required deadlines; and

9. WHEREAS, County LEAs and SDCOE have mutually determined that it is in the best interest of the Parties to together to identify and resolve issues and concerns related to SDCOE's MITI Implementation pursuant to the terms and conditions contained within this MOU.

AGREEMENT

NOW THEREFORE, the Parties enter into this MOU and agree as follows:

1. Recitals. The recitals set forth above are true.
2. Consideration.
 - a. SDCOE's Obligations. In consideration for the County LEAs' releases and waivers contained herein, SDCOE shall:
 1. Publically recognize and thank the County LEAs and each of their, respective, Business Services, Human Resources, and Information Technology personnel for their hard work and efforts in relation to the MITI Implementation to date;
 2. Implement a fully functioning, integrated Enterprise Resource Planning solutions under the scope of services, terms and conditions of the Prior MITI MOUs with the assistance of a team selected by County LEAs;
 - a. In order to implement a fully functioning, integrated Enterprise Resource Planning solutions under the scope of services, terms and conditions of the Prior MITI MOUs, the County Superintendent with the Superintendent of La Mesa-Spring Valley Schools, and the Superintendent of Cajon Valley Union School District shall compose a steering committee made up of no more than 15 members representing County LEAs along with the Assistant Superintendent of Technology for SDCOE ("Steering Committee");
 - b. The purpose of the Steering Committee will be to assess the health of the PeopleSoft system and the quality of all associated support services provided by SDCOE and to advise the County Superintendent on recommended steps to resolve deficiencies discovered through the assessment;

- c. An independent, unbiased, and reputable professional research firm shall be selected by the Steering Committee to perform a thorough assessment of PeopleSoft and all associated support services;
 - d. SDCOE shall cover the full cost of the assessment;
 - e. The Steering Committee shall provide the results of the assessment to the County Superintendent and all County LEAs that utilize the SDCOE PeopleSoft system. The County Superintendent shall work collaboratively with the Steering Committee in the allocation of requisite resources and implementation of measures to resolve deficiencies discovered.
- 3. Recognize the additional unanticipated costs incurred by participating County LEAs and refund 25% of the initial implementation fees with no County LEA district receiving less than \$1,000.00. In addition, waive any and all of the County LEAs' fees, including support, maintenance, and upgrade fee contributions, related to the MITI Implementation for the 2017-18 and 2018-19 fiscal years while the Steering Committee assesses the system and support services ("Fee Moratorium").;
- 4. Upon the conclusion of the Fee Moratorium, future maintenance and support fees shall be reestablished at a rate not to exceed the 2017-2018 published fees, increased by the 2017-18 and 2018-19 COLAs in the State Budget; and
- 5. SDCOE shall reimburse the Cajon Valley Union School District ("CVUSD") for the CVUSD's attorneys' fees incurred on behalf of the County LEAs arising out of or related to the MITI Implementation and the development of this MOU.
- b. County LEAs' Obligations. In exchange for the above consideration, and except as set forth herein, the County LEAs completely release and forever discharge SDCOE, its Board of Trustees, agents, officers, employees, attorneys, successors, predecessors, and insurers from any and all expenses, debts, demands, costs, and other actions or liabilities of every nature, whether in law or in equity, that they may have or may claim to have as a result of, or in any way related to, SDCOE's MITI Implementation to date, including but not limited to any claims for financial damages up to and including the date this MOU is executed.
- c. This MOU and release is made notwithstanding section 1542 of the California Civil Code which provides in part:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

3. Tax Consequences. The Parties makes no representations regarding the federal or state tax consequences of any payments or fee waivers under this MOU.

4. Entire Agreement. This MOU constitutes the entire agreement and understanding of the Parties. There are no oral understandings, terms, or conditions, and neither Party has relied upon any representation, express or implied, not contained herein. If the terms and conditions of this MOU conflict with any and all prior understandings, terms, or conditions, written, oral, express, or implied, including Prior MITI MOUs, the conflicting terms of all prior agreements and understandings are superseded by this MOU.

5. Amendments. This MOU cannot be changed or supplemented orally and may be modified or superseded only by written instrument executed by both Parties.

6. Binding Effect. This MOU is for the benefit of, and shall be binding on, all Parties and their respective successors, heirs, and assigns.

7. Attorneys' Fees and Costs. Except as provided for in Section 2(a)(5) of this MOU, each Party shall bear its own attorneys' fees and costs arising out of or related to the MITI Implementation and the development of this MOU.

8. Other Documents and Cooperation. All Parties agree to cooperate fully in the execution of any additional documents that may be necessary to finalize and implement this MOU.

9. Execution by Facsimile or in Counterparts. This MOU may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed agreement. A facsimile version of any Party's signature shall be deemed an original signature. Each counterpart shall be deemed an original and the same document for all purposes.

10. Severability. If any provision of this MOU is held to be void, voidable, or unenforceable, the remaining portions of the MOU shall remain in full force and effect.

11. Interpretation. The language of all parts of this MOU shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either Party.

12. County LEAs Defined. The term "County LEAs" includes the public school districts operating within San Diego County that utilize the SDCOE PeopleSoft system, their agents, officers, employees, attorneys, successors, predecessors, insurers, and members of their Boards of Trustees.

13. SDCOE Defined. The term “SDCOE” includes the San Diego County Office of Education, its agents, officers, employees, attorneys, successors, predecessors, insurers, and members of the Board of Trustees.

14. Voluntary Agreement. The Parties represent that their authorized designees have read this MOU and its attachments, if any, in full and understand and voluntarily agree to all such provisions. The Parties further declare that, prior to signing this MOU, their authorized designees apprised themselves of relevant data, through sources of their own selection, including consultation with their own attorneys, in deciding whether to execute this MOU. The Parties further represent that each signatory has, as of the Date of Execution of this MOU, the authority and the legal capacity to understand, agree to, and sign this MOU, and that he or she has not assigned any rights or claims related hereto to any third party.

IN WITNESS WHEREOF, the parties have executed this MOU on the date set forth below (“Date of Execution”).

COUNTY LEAs

Dated: _____

Name:

Title:

Alpine Union School District

Dated: _____

Name:

Title:

Bonsall Unified School District

Dated: _____

Name:

Title:

Borrego Springs Unified School District

Dated: _____

Name:

Title:

Cajon Valley Union School District

Dated: _____

Name:

Title:

Cardiff School District

Dated: _____

Name:

Title:

Carlsbad Unified School District

Dated: _____

Name:

Title:

Chula Vista Elementary School District

Dated: _____

Name:

Title:

Coronado Unified School District

Dated: _____

Name:

Title:

Dehesa School District

Dated: _____

Name:

Title:

Del Mar Union School District

Dated: _____

Name:

Title:

Encinitas Union School District

Dated: _____

Name:

Title:

Escondido Union High School District

Dated: _____

Name:

Title:

Escondido Union School District

Dated: _____

Name:

Title:

Fallbrook Union Elementary School District

Dated: _____

Name:

Title:

Fallbrook Union High School District

Dated: _____

Name:

Title:

Grossmont Union High School District

Dated: _____

Name:

Title:

Jamul-Dulzura Union School District

Dated: _____

Name:

Title:

Julian Union High School District

Dated: _____

Name:

Title:

Julian Union School District

Dated: _____

Name:

Title:

La Mesa-Spring Valley School District

Dated: _____

Name:

Title:

Lakeside Union School District

Dated: _____

Name:

Title:

Lemon Grove School District

Dated: _____

Name:

Title:

Mountain Empire Unified School District

Dated: _____

Name:

Title:

National School District

Dated: _____

Name:

Title:

Oceanside Unified School District

Dated: _____

Name:

Title:

Poway Unified School District

Dated: _____

Name:

Title:

Ramona Unified School District

Dated: _____

Name:

Title:

Rancho Santa Fe School District

Dated: _____

Name:

Title:

San Dieguito Union High School District

Dated: _____

Name:

Title:

San Marcos Unified School District

Dated: _____

Name:

Title:

San Pasqual Union School District

Dated: _____

Name:

Title:

San Ysidro School District

Dated: _____

Name:

Title:

Santee School District

Dated: _____

Name:

Title:

Solana Beach School District

Dated: _____

Name:

Title:

South Bay Union School District

Dated: _____

Name:

Title:

Spencer Valley School District

Dated: _____

Name:

Title:

Sweetwater Union High School District

Dated: _____

Name:

Title:

Vallecitos School District

Dated: _____

Name:

Title:

Valley Center-Pauma Unified School District

Dated: _____

Name:

Title:

Vista Unified School District

Dated: _____

Name:

Title:

Warner Unified School District

SAN DIEGO COUNTY OFFICE OF EDUCATION:

Dated: _____

By: _____

Name:

Title:

APPROVED AS TO FORM:

COUNSEL FOR COUNTY LEAs

Dated: _____

Peter K. Fagen

Fagen Friedman & Fulfrost

COUNSEL FOR SAN DIEGO COUNTY OFFICE OF EDUCATION:

Dated: _____

By: _____

Name:

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