 **Independent School District**

 INDEPENDENT SCHOOL DISTRICT

SERVICES AGREEMENT

FOR

The Provision of Pre-Kindergarten Educational Services

WITH

**[Legal Name of Vendor or Professional Service Provider]**

AWARDED BY BOARD DOCUMENT NO. **[Include From Awarding Document To Vendor, Approved under RFP/RFB No. XX-XXXXXX at Month, Date, Year Board Meeting – Agenda Item No. X]**

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**INDEPENDENT SCHOOL DISTRICT**

**SERVICES AGREEMENT**

This Agreement between [redacted] Independent School District ("Owner" or "District" or "[redacted] ISD"), a local political subdivision of the state of Texas and [insert legal name of Vendor] is made and entered into as of [insert date] (the "Effective Date").

**RECITALS:**

**Whereas**, District desires to retain a person or firm to provide the following services:

Educational services to eligible pre-kindergarten students at Vendor's facilities located at

[Insert description of what is needed and what is to be done, in general terms. Include Vendor's procurement RFQ or RFP and board approval number; also include locations, if site specific]; and

**Whereas**, Vendor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by the District, the parties agree to the following:

1. **Scope of Work and Time for Performance.**

- a. The scope of the work ("Work"), is set forth in Exhibit A and its Addendum and the time for performance is set forth in Exhibit B attached hereto. Exhibit A and Exhibit B are incorporated in this Agreement and made a part hereof for all purposes.
- b. Upon execution of this Agreement, all services previously performed by Vendor on behalf of District and included in the description of the Work, shall become a part of the Work and shall be subject to the terms and conditions hereof.
- c. Vendor shall obtain all approvals and make payment for any and all permits that are necessary for the performance of the Work.
- d. District shall provide Vendor with a program of its requirements for the Work or for work by others which utilize Vendor's Work Product ("Program"). The Program may be a series of documents or other communications. Vendor shall, at all times, conform its Work to the requirements of the Program and to the requirements of District.

2. **Term.**

- a. **Term of Agreement:** The Agreement is effective as of the Effective Date set forth above and terminates on **[date]**. At the option of the District, the Agreement may be renewed for additional **[XX]** year terms, provided that the District has given Vendor written notice of the District's intention to renew no later than thirty (30) days prior to the expiration of the then-current term and provided further that at the time the District gives its written notice the Vendor is not in default and the Agreement has not been terminated.

3. **Vendor's Duties and Representations.**

- a. Notwithstanding anything to the contrary contained in this Agreement, District and Vendor agree and acknowledge that District is entering into this Agreement in reliance on Vendor's special and unique abilities with respect to performing the Work, and Vendor's special and unique abilities with respect to the provision of pre-kindergarten educational services.. The Vendor accepts the relationship of trust and confidence established between it and the District by this Agreement. Vendor covenants with District to use its best efforts, skill, judgment, and abilities to perform the Work and to further the interests of District in accordance with District's requirements and procedures, in accordance with the highest standards of Vendor's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Vendor warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the Work.
- b. Vendor warrants, and agrees that the Work will be accurate and free from any material errors. The Vendor's duties as set forth herein shall at no time be in any way diminished by reason of any approval of the Work by the District nor shall the Vendor be released from any liability by reason of such approval by the District, it being understood that the District at all times is ultimately relying upon the Vendor's skill and knowledge in performing the Work.
- c. The Vendor represents, and agrees that all persons connected with the Vendor directly in charge of the Work are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.
- d. The Vendor agrees to furnish efficient business administration and perform the Work in the most expeditious and economical manner consistent with the interests of District.
- e. Vendor warrants, represents, and agrees that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Vendor has been duly authorized to act for and bind Vendor; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder; and the individual executing this Agreement on behalf of Vendor has been duly authorized to act for and bind Vendor.
- f. Neither the execution and delivery of this Agreement by Vendor nor the performance of its obligation hereunder will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, by any partnership agreement by which Vendor is bound, or any agreement by which Vendor is bound or

to the best of the Vendor's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Vendor.

- g. Except for the obligation of District to pay Vendor certain fees and expenses pursuant to the terms of this Agreement, District shall have no liability to Vendor or to anyone claiming through or under Vendor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of District to Vendor for payment pursuant to this agreement, no present or future partner or affiliate of District or any agent, officer, director, employee, or trustee of the District., or anyone claiming under District has or shall have any personal liability to Vendor or to anyone claiming through or under Vendor by reason of the execution or performance of this Agreement.

4. **The Agreement Sum.**

- a. The District shall pay Vendor in current funds for the performance of the Work as set forth in Exhibit C.
- b. The Agreement Sum includes any applicable Federal, State or Local Sales or use tax payable on this transaction.

5. **Payment Terms.**

- a. Absent any provision to the contrary, District shall not be obligated to make any payment (whether a Progress Payment or Final Payment) to Vendor hereunder if any one or more of the following conditions precedent exist:
  - (1) Vendor is in breach or default under this Agreement;
  - (2) Any part of such payment is attributable to Work which is not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to Work which is performed in accordance with this Agreement;
  - (3) Vendor has failed to make payments promptly to its sub-vendors or sub-contractors or other third parties used in connection with the Work for which District has made payment to Vendor; or
- b. No partial payment made hereunder shall be construed to be final acceptance or approval of that part of the Work to which such partial payment relates nor shall it relieve Vendor of any of its obligations hereunder with respect thereto.
- c. Vendor shall promptly pay all bills for labor and/or material performed and furnished by others in connection with the performance of the Work.
- d. Vendor shall maintain on a current basis complete books and records relating to this Agreement. Such records shall include, but not be limited to, documents supporting all bids, income and expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this Agreement. In addition, Vendor shall maintain detailed payroll record including all subsistence, travel and field expenses, canceled checks and receipts and invoices for all items. These documents and records shall be retained for at least ten (10) years from the completion of this Agreement. Vendor will permit District to audit all books, accounts or record relating to this Agreement or all books, accounts or record of any business entities controlled by Vendor that participated in this Agreement in any way. Any audit may be conducted on Vendor's premises or, at District's option; another location. Vendor shall provide all books and records within fifteen (15) days upon receipt of written notice from District. Vendor shall refund any monies erroneously paid to the Vendor or charged to the District. If District ascertains

that it has been billed erroneously by Vendor for an amount equaling 5% or more of the Agreement amount, Vendor shall be liable for the costs of the audit in addition to any other penalty to be imposed.

- e. The acceptance of Final Payment shall constitute a waiver of all claims by the Vendor except those previously made in writing and identified by the Vendor as unsettled at the time of the Final Request for payment.
- f. District shall have the right to verify the details set forth in Vendor's billings, certificates, and statements, either before or after payment therefor, by (1) inspecting the books and records of Vendor at mutually convenient times; (2) examining any reports with respect to this Project; (3) interviewing Vendor's business employees; (4) visiting any place where performance of all or a portion of the work occurs; and (5) other reasonable action.
- g. In the event a federal grant or other federal financing participates in the funding of this agreement, the Vendor shall permit access to and grant any federal representatives the right to examine his books covering his work under this Agreement. The Vendor shall comply with federal requirements as they relate to this work.
- h. For purposes of Texas Government Code §§ 2251.021(a)(1) and 2251.021(a)(2), the date the performance of service is completed, and the date goods are received, is the date when the District's representative approves the invoice.

6. **Ownership and Use of Documents.**

- a. All documents and materials particular to the Work prepared by Vendor or Vendor's subcontractors ("Work Material"), are the property of the District and for its exclusive use and re-use at any time without further compensation and without any restrictions.
- b. Except for such Work Material which is intended to be made public as part of the Project, Vendor shall treat all such Work Material as confidential, and Vendor shall neither use any such Work Material or copies thereof on other work nor disclose such material or information to any other party without District's prior written approval.

7. **Default and Termination.** Paragraph intentionally deleted; see Educational Services Agreement, Section 21.02 and 21.03.

8. **Indemnification.**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE VENDOR SHALL AND DOES AGREE TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS DISTRICT, ITS TRUSTEES, OFFICERS, DIRECTORS, OFFICIALS, VENDORS, VOLUNTEERS, EMPLOYEES, SUCCESSORS AND ASSIGNEES, THE ARCHITECTS, ENGINEERS, AND THE PROGRAM MANAGERS (COLLECTIVELY, "THE INDEMNIFIED PARTIES") OF, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, PENALTIES, AND EXPENSES, INCLUDING ATTORNEY FEES AND COURT COSTS, OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, TO THE EXTENT DIRECTLY OR INDIRECTLY ARISING OUT OF, CAUSED BY, OR RESULTING FROM ANY NEGLIGENT, WRONGFUL OR TORTIOUS ACT OR OMISSION OF THE VENDOR, ANY SUBCONTRACTOR, SUB-VENDOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER (COLLECTIVELY, "THE LIABILITIES"). IN THE EVENT OR FAILURE BY THE VENDOR TO FULLY PERFORM IN ACCORDANCE WITH THIS INDEMNIFICATION PARAGRAPH, EACH OF THE INDEMNIFIED PARTIES MAY, AT ITS OPTION, AND WITHOUT RELIEVING VENDOR OF ITS OBLIGATIONS HEREUNDER, MAY SO PERFORM,

BUT ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY VENDOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES, OR ANY OF THEM SHALL BEAR INTEREST UNTIL REIMBURSED BY VENDOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF TEXAS. THIS INDEMNIFICATION PARAGRAPH SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

VENDOR SHALL PROTECT AND INDEMNIFY THE DISTRICT FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT OR COPYRIGHT, ARISING BY OR OUT OF ANY OF THE WORK PERFORMED HEREUNDER OR THE USE BY VENDOR, OR BY DISTRICT AT THE DIRECTION OF VENDOR, OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, DISTRICT SHALL PROMPTLY NOTIFY VENDOR AND VENDOR SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. VENDOR DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF DISTRICT'S OR ARCHITECT'S OR ENGINEER'S DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, DISTRICT AGREES TO COOPERATE REASONABLY WITH VENDOR AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of these indemnification obligations, such legal limitations are made part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and so modified, the indemnification obligations shall continue in full force and effect.

It is understood and agreed that this Article is subject to, and expressly limited by, the terms and conditions of the Texas Civ. Prac. & Rem. Code Ann. Sec 130.001 to 130.005, as amended.

The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

9. **Independent Vendor.**

Vendor recognizes that it is engaged as an independent vendor and acknowledges that District will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Vendor, in accordance with its status as an independent vendor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of District, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of District, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Vendor hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by applicable law.

10. **Insurance.**

a. Vendor, consistent with its status as an independent vendor, shall carry at least the following insurance in such form, in such companies and in such amounts, unless otherwise specified, as District may require. Such insurance is listed in Exhibit D. All insurance must carry a waiver of subrogation and other requirements as listed in Exhibit D.



- b. The Vendor shall carry such professional liability and errors and omissions insurance, covering the services provided under this Agreement, as is acceptable to and approved by the District. The fees for such insurance will be at the expense of the Vendor.
- c. Vendor shall deliver to District:
  - (1) Certificates evidencing the existence of all such insurance within ten calendar days after the execution of the agreement and prior to the performance or additional performance of any services to be performed by Vendor hereunder from or after the date of this Agreement. Should the Vendor fail to deliver to the District these certificates in the form and in the manner specified within the required ten calendar days or as may be extended in writing by the District at its sole discretion; it is agreed that the Agreement is void and of no effect.
  - (2) Replacement certificates not less than thirty (30) days prior to the expiration of any such insurance. If, however, Vendor fails to pay any of the renewal premiums for the expiring policies, District shall have the right to make such payments and set-off the amount thereof against the next payment coming due to Vendor under this Agreement; and
  - (3) Such Certificates shall name District as an Additional Insured, with the exception of Workers' Compensation, Employer's Liability, and Professional Liability, and shall provide that the policies will not be canceled until after thirty (30) days' unconditional written notice to District, giving the District the right to pay the premium to maintain coverage, in which event Paragraph 10.d. (2) shall apply.
- d. The insurance policies required in this Agreement shall be kept in force for the periods specified below:
  - (1) Commercial General Liability Insurance shall be kept in force until receipt of final payment by the Vendor;
  - (2) Workers' Compensation Insurance shall be kept in force until the Vendor's Services have been fully performed and accepted by District in writing.
- e. Agreements below \$25,000 have no specific insurance requirements unless otherwise required by Risk Management with the exception of a vendor providing some type of medical service.

11. **Miscellaneous.**

- a. Assignment. This Agreement is a personal service contract for the services of Vendor, and Vendor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party, unless consented to in writing by District (which consent may be withheld in District's sole and absolute discretion) . The benefits and burdens of this Agreement are, however, assignable by District. The Vendor shall not subcontract any portion of the work required by this Agreement without prior written approval of the District except for any subcontract work identified herein.
- b. Compliance with Applicable Laws and District Policies. The Vendor shall comply with any and all federal, state and local laws, and District policies affecting the services covered by this Agreement. Such laws may include, but are not limited to the following: a) Family Educational Rights and Privacy Act (FERPA); b) Protection of Pupil Rights Amendment (PPRA); and/or Health Insurance Portability and Accountability Act of 1996 (HIPAA). District policies may be obtained at [www.██████████.org](http://www.██████████.org) under Board of Trustees/District Policies.

- c. Texas Public Information Act (TPIA). Vendor acknowledges that the [REDACTED] ISD is subject to the Texas Public Information Act (TPIA). As such, upon receipt of a request under the TPIA, [REDACTED] ISD is required to comply with the requirements of the TPIA. For purposes of the TPIA, "public information" is defined as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:
1. by [REDACTED] ISD; [or]
  2. for [REDACTED] ISD and [REDACTED] ISD
    - a. owns the information; [or]
    - b. has a right of access to the information; or
    - c. spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
  3. by an individual officer or employee of [REDACTED] ISD in the officer's or employee's official capacity and the information pertains to official business of the [REDACTED] ISD.

Vendor is expected to fully cooperate with the [REDACTED] ISD in responding to public information requests. This includes, but is not limited to, providing the [REDACTED] ISD with requested documentation. In the event that the request involves documentation that Vendor has clearly marked as confidential and/or proprietary, [REDACTED] ISD will provide Vendor with the required notices under the TPIA. Vendor acknowledges that it has the responsibility to brief the Attorney General's Office on why the documents identified as confidential and/or proprietary fall within an exception to public disclosure.

- d. STUDENT CONFIDENTIALITY. Intentionally deleted; see Educational Services Agreement, Section 13.04 and Data Sharing Agreement at Addendum C.
- e. Suspension of the Work for the Convenience of the District. Intentionally deleted; see Educational Services Agreement, Section 21.04.
- f. Family Code Child Support Certification. By signing this Agreement, the undersigned certifies as follows: "Pursuant to Section 231.006 of the Texas Family Code, the Vendor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified grant, loan, or payment." The Vendor hereby acknowledges that this statement is true, correct and accurate. This Agreement may be terminated and payment may be withheld if this statement is inaccurate.
- g. Certain Bids and Contracts Prohibited. By signing this Agreement, the undersigned certifies as follows: "Under Section 2155.004, *Texas Government Code*, the Vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."
- h. Loss of Funding and Commitment of Current Revenue. Intentionally deleted; see Educational Services Agreement, Section 21.02.
- i. Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Vendor and District and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a written amendment signed by District and Vendor.
- j. Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

- k. Governing Law and Venue. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas, and the parties hereto agree that venue shall be in [REDACTED] County, Texas.
- l. Waivers. No delay or omission by either of the parties in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.
- m. Proprietary Interests. With the exception of prior copyrighted or trademarked materials of the Vendor, Vendor agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type relating to its activities hereunder, whether or not any of the same is accepted or rejected by District, shall remain the property of District and shall not be used or published by Vendor or any other party without the express prior consent of District. In implementation of the foregoing, Vendor hereby grants and assigns to District all rights and claims of whatever nature and whether now or hereafter arising in and to any and all of such reports, studies, plans, models, drawings, specifications, and other information or data and shall cooperate fully with District in any steps District may take to obtain copyrights, trademark or like protections with respect thereto. All information owned, possessed or used by District which is communicated to, learned, developed or otherwise acquired by Vendor in the performance of consulting services for District, which is not generally known to the public, shall be confidential and Vendor shall not, beginning on the date of first association or communication between District and Vendor and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Vendor's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Vendor shall not make any press releases, public statements, or advertisement referring to the Work or the engagement of Vendor as an independent vendor of District in connection with the Work, or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of District. Vendor shall obtain assurances similar to those contained in this subparagraph from persons, vendors, and subcontractors retained by Vendor. Vendor acknowledges and agrees that a breach by Vendor of the provisions hereof will cause District irreparable injury and damage. Vendor, therefore, expressly agrees that District shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.
- n. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- o. Appointment. District hereby expressly reserves the right from time to time to designate by notice to Vendor a representative to act partially or wholly for District in connection with the performance of District's obligations hereunder. Vendor shall act only upon instructions from such representative unless otherwise specifically notified to the contrary.
- p. Records. Records of Vendor's costs, reimbursable expenses pertaining to the Project and payments shall be made available to District or its authorized representative during business hours and shall be retained for ten (10) years after final Payment or abandonment of the Project, unless District otherwise instructs Vendor in writing.

q. Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

(1) If to District: [REDACTED]  
Assistant Superintendent  
Early Learning  
[REDACTED] Independent School District  
[REDACTED]  
[REDACTED] Texas [REDACTED]

With Copies to: Chief  
Teaching & Learning  
[REDACTED] Independent School District  
[REDACTED]  
[REDACTED]

(2) If to Vendor: [Name of Vendor]  
[Vendor Company Name]  
[REDACTED] [Street Address]  
[REDACTED] [City, State Zip]

(3) or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

r. Severability. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

s. Enforcement. It is acknowledged and agreed that Vendor's services to District are unique, which gives Vendor a peculiar value to District and for the loss of which District cannot be reasonably or adequately compensated in damages; accordingly, Vendor acknowledges and agrees that a breach by Vendor of the provisions hereof will cause District irreparable injury and damage. Vendor, therefore, expressly agrees that District shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, but only if District is not in breach of this Agreement.

t. Nondiscriminatory Employment. In connection with the execution of this Agreement, the Vendor shall fully comply with the District's non-discrimination requirement cited below.

"The [REDACTED] Independent School District (District), as an equal opportunity educational provider and employer, does not discriminate on the basis of race, color, religion, sex, national origin, disability, sexual orientation and/or age in educational programs or activities that it operates or in employment decisions. The District is required by Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Age Discrimination Act of 1975, as amended, as well

as Board policy not to discriminate in such a manner. (Not all prohibited bases apply to all programs.)”

Submittal to District of reasonable evidence of discrimination will be grounds for termination of the Agreement. This policy does not require the employment of unqualified persons.

Sexual harassment of employees or students of the District by Vendor’s employees or agents is strictly forbidden. Any employee or agent of the Vendor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Vendor, including dismissal.

- u. District Representative. The District may designate a District Representative for this Project who shall assume certain activities and responsibilities attributed to the District in this Agreement. The Vendor agrees to cooperate and provide services in conjunction with the District Representative, as directed by the District.
- v. Conflict of Interest. No employee of District shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her interest or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.
- w. Business Ethics:
  - (1) During the course of pursuing contracts, and the course of Agreement performance, Vendor and its subcontractors and vendors will maintain business ethics standard aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of the District, its trustees, officers, agents, or Vendors of the District, or to any of their family members. At any time Vendor believes there may have been a violation of this obligation, Vendor shall notify the District of the possible violation. The District is entitled to request a representation letter from Vendor, its subcontractors or vendors at any time to disclose all things of value passing from Vendor, its subcontractors or vendors to District's personnel, its trustees, officers, agents, or Vendors.
  - (2) The District may, by written notice to the Vendor, cancel the Agreement without liability to the Vendor if it is deemed by the District that gratuities, in the form of entertainment, gifts, or anything of monetary value, were offered or given by the Vendor, or any agent, or representative of the Vendor, to any officer or employee or agent of the District with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the performing of such a contract. In the event the Agreement is cancelled by the District pursuant to this provision, District shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Vendor in providing such gratuities.
- x. Subcontractor Contracts. The Vendor shall contract with each of its subcontractors, at a minimum, with the same contractual provisions and responsibilities as indicated in this Agreement.

12. **Assignment of Work .**

An Assignment of Work to the Agreement is attached as Exhibit G and shall be used to document any additions or change in the sum or any material change in scope of Work. The description of Work to be performed, budget (if applicable), schedule, amount, and other details shall be provided

in a completed Assignment of Work, which on execution by the Vendor and District shall modify the Agreement.

13. **Sales Tax Exemption.**

- a. The Vendor shall be held to have studied all tax laws for the State of Texas, the County of [REDACTED] Texas, and the City of [REDACTED] or other municipality having jurisdiction, and shall pay all taxes for which the Vendor may be held liable as a consumer or user of goods, or otherwise without addition to the Agreement price. The Vendor shall pay all sales, consumer, use and other similar taxes required by law.
- b. The District is an exempt organization as defined by the Limited Sales and Excise Use Tax Act of Texas. The Vendor may provide an exemption certificate in lieu of sales tax on the purchase, rental, or lease of all materials, supplies, equipment used or consumed and other tangible personal property incorporated into the property being improved by virtue of this Agreement, as well as all materials, supplies, equipment, another tangible personal property used or consumed by the Vendor in performing this Agreement with the District. The Vendor may issue exemption certificate(s) to its suppliers in lieu of said sales tax for all of said materials and supplies. The uses of said materials and supplies for which an exemption from the said sales tax is claimed and any exemption certificate(s) shall comply with the applicable rulings of the State Comptroller.
- c. Title to all items purchased under a resale certificate shall vest in the District at the time of initial possession by the Vendor and shall only be used in performance of this Agreement. Vendor shall cause such items to promptly be marked, labeled, or otherwise physically labeled as District's property. Vendor shall cause items purchased under a resale certificate to send the receiving ticket to the District to be added to inventory before use by the Vendor. Any tangible personal property purchased under a resale certificate as described above and not fully used up in the performance of the Agreement shall remain with the District.

14. **Felony Conviction Notice, Criminal Background Check and Identification Badge.**

- a. Felony Conviction Notice: Vendor shall certify compliance with Texas Education Code 22.0834 and Education Commissioner's rules regarding criminal history record review for all employees, applicants for employment, agents or subcontractors of the Vendor. Additionally, Vendor must give advance notice to the District if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony. The District may terminate this Agreement pursuant to Article 7 if the District determines that the person or business entity failed to give notice as required by this paragraph or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly held corporation.
- b. Criminal Background Check: Vendor will obtain criminal history record information that relates to an employee, applicant for employment, or agent of the Vendor if the employee, applicant, or agent has or will have continuing duties related to the contracted services; and the duties are or will be performed on school property or at another location where students are regularly present. The Vendor shall certify to the District before beginning work and at no less than an annual basis thereafter that criminal history record information has been obtained. Vendor shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony, or misdemeanor involving moral turpitude, as defined by Texas law, from District property or other location where students are regularly present. District shall be the final decision-maker of what constitutes a "location where students are regularly present." The third party company shall verify the criminal record history information, and may be used to verify compliance with the federal Drug Free Workplace Act of 1988 or its successor, and

the federal Education Department General Administrative Regulations, current edition, in its testing and review process. Vendor's violation of this section shall constitute a substantial failure under Article 7.

- c. If the Vendor is the person or owner or operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review, and must submit original evidence acceptable to the District with this Agreement showing compliance.

15. **M/WBE Plan.**

- a. Vendor, if subcontracting portions of the work, agrees to allocate work to subcontractors or subcontractors which are historically underutilized businesses in accordance with the Minority and Women Owned Business Enterprise (M/WBE) forms and guidelines ("M/WBE Plan") attached hereto as Exhibit E. No changes to the M/WBE Plan may be made unless approved in writing by the District. The Vendor, prior to the execution of this Agreement, shall report their M/WBE participation goal as a percent of the Agreement Sum. During the performance of all Work under this Agreement, the Vendor and its agents shall comply with all M/WBE policies of the District. The information shall be identified per firm, discipline and participation. While this Agreement is in effect and until the expiration of one year after final completion, the District may require information from the Vendor, and may conduct audits, to assure that the Plan is being, and was, followed. With each Vendor's application for payment, the Vendor shall report their updated M/WBE Plan and actual M/WBE participation information.
- b. Should Vendor propose the deletion of an M/WBE classified/certified subcontractor from its employ, the Vendor shall substitute a subcontractor of like classification/certification, and if Vendor is unable to substitute a subcontractor of like classification, Vendor shall provide District with documentation of its best efforts to acquire the services of an M/WBE replacement firm.

16. **Agreement.**

- a. The Agreement between the Parties consists of this Agreement, Exhibit A Educational Services Contract, Exhibit B Schedule and Timeline of Services Provided, Exhibit C Payment For Services, Exhibit D Insurance Requirements, Exhibit E M/WBE Plan, Exhibit F Conflict of Interest Questionnaire, and Exhibit G Assignment of Work, In addition, a Purchase Order (including the reverse side), and if utilized in obtaining the services herein described, procurement documents, shall become a part of this Agreement (collectively, the "Agreement Documents").
- b. This Agreement supersedes all prior agreements, written or oral, between Vendor and District and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by District and Vendor.
- c. In the event of conflict, the following order of precedence shall be followed.

Approved Modifications to the Agreement, i.e. written Amendments and Assignments of Work  
Agreement and Exhibits  
Procurement Documents  
Authorized Transaction documentation  
Purchase Order

17. **Claims And Disputes.**

- a. **Pre-Litigation Mediation.** Any claim, dispute or other matter in question arising out of or related to this Agreement (collectively, "Claim" or "Claims") shall be subject to non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. The parties shall share the mediator's fee and any filing fees equally, and the mediation shall be held in [REDACTED] Texas. Agreements reached in mediation must be approved by the Board of Trustees and shall thereafter be enforceable as settlement agreements in any court having jurisdiction thereof. Mediation shall be conducted by a mediator selected jointly by the District and Vendor. Except for injunctive relief, neither party may commence litigation relating to any Claim arising under this Agreement without first submitting the Claim to mediation.
- b. **Claims for Consequential Damages.** The Vendor and District waive Claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 7. Nothing contained in this Subparagraph 17 shall be deemed to preclude an assessment of liquidated damages, in accordance with the requirements of the Agreement Documents.
- c. **Texas Tort Claims Act.** Owner does not waive any of its immunities from lawsuit or damages, or both, as provided by the Texas law, as a public institution, whether granted by constitution, common law or statute and nothing contained in the Agreement Documents or any action required of the Owner by the Agreement Documents shall be interpreted to be such a waiver.
- d. **NEITHER THIS AGREEMENT, NOR ANY PART THEREOF, NOR ANY DISPUTE ARISING HEREUNDER, IS SUBJECT TO ARBITRATION.**

18. **Vendor Conduct**

- a. Sexual harassment of employees of the Vendor or employees or students of Owner by employees of the Vendor is strictly forbidden. Any employee of the Vendor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Vendor, including dismissal.
- b. The Vendor shall be responsible to the Owner for acts and omissions of the Vendor's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Vendor or any of its subcontractors. It is understood and agreed that the relationship of Vendor to Owner shall be that of an independent vendor/contractor. Nothing contained herein or inferable here from shall be deemed or construed to (1) make Vendor the agent, servant or employee of the Owner, or (2) to create any partnership, joint venture, or other association between Owner and Vendor. Any direction or instruction by Owner or any of its authorized representatives in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Vendor's independent vendor/contractor status described herein.
- c. Vendor shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Vendor's employees, subcontractors, and all other persons carrying out the Agreement. Vendor shall require all workers, whether Vendor's own forces or the forces of Vendor's subcontractors, while on Owner's property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's



students and staff. All areas of campus shall be off limits to Vendor's forces, unless their work assignment specifies otherwise. Vendor shall also require adequate and appropriate dress and identification of Vendor's employees, subcontractors, and all other persons carrying out the Work. The Vendor shall further ensure that no on-site fraternization shall occur between personnel under the Vendor's and subcontractor's direct or indirect supervision and Owner's students or employees and the general public. Failure of an individual to adhere to these standards of conduct shall result in the immediate termination of the employment of the offending employee from all construction on any of Owner's property and immediate removal from the site. Repeated termination of Vendor's or Vendor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by Owner.

19. **Communications With The District:**

19.1 VENDOR CONTACT WITH [REDACTED] ISD BOARD MEMBERS:

[REDACTED] ISD Board Policies CHE (LOCAL) and CAA (REGULATION) forbid vendors from contacting Board members individually **at any time during the procurement process or during the performance of any contract**. Below are excerpts of Board Policy CHE (LOCAL), for General Procurement process and CAA (REGULATION) for Technology Purchases eligible for E-Rate funding, which detail this restriction:

CAA (REGULATION):

"Contracts with vendors participating in the District's E-Rate Program will include the following provisions:"

"The vendor will refrain from contacting individual members of the Board regarding any aspect of the vendor's E-Rate business, whether current or anticipated. Communications with the Board, if required, will be in writing addressed to all members of the Board."

"The vendor will comply with all state and local laws and District policies regarding conflicts of interest and gifts of things of value, including the FCC's rules and requirements regarding "fair and open competition." The vendor will complete all affidavits and questionnaires required by the District relating to conflicts of interest and gifts in a complete and truthful manner. 4. A vendor that violates any of these provisions may have a pending bid or proposal rejected, be excluded or barred from receiving future contracts and/or have an existing contract canceled. CAA (REGULATION) – Page 4 of 16

[REDACTED] ISD Board Policy CAA (REGULATION) may be viewed in its entirety from the [REDACTED] ISD website.

CHE (LOCAL):

"Persons conducting commercial business with the District shall refrain from contacting individual members of the Board regarding any aspect of the business. Communications with the Board regarding any aspect of the business shall be in writing and addressed to all Board members." CHE (LOCAL) – Page 1 of 4

"Any person or entity in violation of this policy may have a pending bid or proposal rejected, be barred from receiving future contracts, and/or have an existing contract canceled." – CHE (LOCAL) – Page 2 of 4

"Conducting business" shall include participation in a pending procurement, the negotiation of any contract, the performance of any contract, the selling of any product, and the performance of any services." CHE (LOCAL) - Page 2 of 4

[REDACTED] ISD Board Policy CHE (LOCAL) may be viewed in its entirety from the [REDACTED] ISD website.

19.2 VENDOR PROHIBITION FROM USE OF FORMER [REDACTED] ISD EMPLOYEES:

[REDACTED] ISD Board Policies CHE (LOCAL) and DBD (LOCAL) prohibits vendors from using of former [REDACTED] ISD employees to work on, or have any involvement, in District-related business performed or provided by that vendor for a period of two years, for the Superintendent of Schools, Chiefs, Executive Directors, and Directors or equivalents, and 18 months for all other former employees. Below are excerpts from Board Policies CHE (LOCAL) and DBD (LOCAL), which detail these restrictions:

CHE (LOCAL):

"The District vendors, Vendors, and vendors shall not employ any employee or former employee for 18 months after the termination of such employee's employment relationship with the District unless the former employee will not provide services to the District, or work on, or have any involvement, in District-related business of the vendor." – CHE (LOCAL) – Page 4 of 4

[REDACTED] ISD Board Policy CHE (LOCAL) may be viewed in its entirety from the [REDACTED] ISD website. DBD (LOCAL):

"Former employees, including the Superintendent of Schools, Chiefs, Executive Directors, and Directors or equivalents thereto shall not make any communication to or appearance before a current committee, Superintendent, principal, or employee of the District before the two-year anniversary of the date the former employee ceased to be the Superintendent of Schools, a Chief, an Executive Director or a Director if the communication is made:

19.2.1 With the intent to influence; or

19.2.2 On behalf of any person in connection with any matter on which the former Superintendent of Schools, Chiefs, Executive Directors and/or Directors, seeks action by the District. [See CHE(LOCAL) and CH(LOCAL)]

A person who has been employed as a full-time employee of the District may not perform services for the District for compensation as a vendor or Vendor or on behalf of a vendor or Vendor for 18 months after the termination of the person's employment relationship with the District. This restriction does not apply to former employees who are hired as classroom teachers; campus based professional employees or campus principals." – DBD (LOCAL) – Page 3 of 4

[REDACTED] ISD Board Policy DBD (LOCAL) may be viewed in its entirety from the [REDACTED] ISD website.

**Neither the execution of this Agreement by the District nor any other conduct of any representative of the District relating to the Agreement shall be considered a waiver of governmental immunities available to the District.**

IN WITNESS WHEREOF, the parties hereunto have executed the Agreement on the date first written.

Vendor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

District:

██████ Independent School District  
████████████████████  
██████ Texas ██████

**FOR THE VENDOR**

**FOR THE DISTRICT**

By: \_\_\_\_\_  
(PRINT NAME OF PERSON SIGNING FOR VENDOR)  
FOOTNOTE)

By: \_\_\_\_\_  
(PRINT NAME OF REPRESENTATIVE- SEE

Signature: \_\_\_\_\_  
(VENDOR REPRESENTATIVE SIGNATURE)

Signature: \_\_\_\_\_<sup>1</sup>  
(DISTRICT REPRESENTATIVE SIGNATURE)

Title: \_\_\_\_\_  
(TITLE OF VENDOR'S REPRESENTATIVE)

Title: \_\_\_\_\_  
(TITLE OF DISTRICT REPRESENTATIVE)

\_\_\_\_\_  
School Attorney:  
Approved as to form.

By: \_\_\_\_\_  
\_\_\_\_\_  
(SIGNATURE OF SCHOOL ATTORNEY)

<sup>1</sup> The District Representative per Signature Delegation Memo signs after School Attorney.

EXHIBIT A  
EXHIBIT A – EDUCATIONAL SERVICES CONTRACT

This Educational Services Contract (hereafter "Contract") is made by and between the [REDACTED] Independent School District (hereafter "the District" or "[REDACTED] ISD") and [REDACTED] (hereafter "the Provider", and collectively referred to as the "Parties").

RECITALS

WHEREAS, [REDACTED] ISD is a public independent school district and political subdivision of the State of Texas, whose principal office is located at [REDACTED] [REDACTED] Texas, [REDACTED]; and

WHEREAS, the Provider is a nationally-accredited child care center operator with corporate offices located at [REDACTED]; and

WHEREAS, the District desires to retain the Provider pursuant to Texas Education Code Sections 11.157 and 29.1532(b) to provide educational services on a tuition-free basis for eligible three- and four-year-old Pre-Kindergarten students residing within the geographical boundaries of [REDACTED] ISD; and

WHEREAS, [REDACTED] ISD and the Provider desire to enter into this Contract under the terms and conditions set forth herein to provide educational services to eligible Pre-Kindergarten students at Provider's facilities; and

WHEREAS, the Effective Date of this Contract shall be [REDACTED], for educational services which shall begin on [REDACTED]; and

NOW, THEREFORE, for and in consideration of the mutual covenants, representations, and agreements set forth in this Contract, the receipts and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

ARTICLE I  
PURPOSE OF THE CONTRACT

1.01 Purpose. Approximately 5,000 Pre-Kindergarten-aged children within the boundary of the [REDACTED] ISD are not enrolled in any Pre-Kindergarten program and may therefore not meet Kindergarten Ready criteria. In order to expand the number of eligible three- and four-year-old Pre-Kindergarten students who receive Pre-Kindergarten instruction, the [REDACTED] ISD is contracting with the Provider to deliver half-day tuition-free Pre-Kindergarten educational services and instruction. This Contract may be expanded to provide full-day programs if any law is enacted which provides state or federal funding for full-day Pre-Kindergarten programs.

1.02 Pre-Kindergarten Criteria. Pursuant to Texas Education Code Section 29.153, a student eligible to be served by the Provider under this Contract, is a child assigned to the Provider by [REDACTED] ISD who is at least three years of age and: (1) is unable to speak and comprehend the English language; (2) is educationally disadvantaged as defined by Texas Education Code Section 5.001(4); (3) is a homeless child, as defined by 42 U.S.C. Section 11434a, regardless of the residence of the child, of either parent of the child, or of the child's guardian or other person having lawful control of the child; (4) is the child of an active duty member of the armed forces of the United States of America, including the state military forces or a reserve component of the armed forces, who is ordered to active duty by proper authority; (5) is the child of a member of the armed forces of the United States of America, including the state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty; or (6) is or ever has been in the conservatorship of the Department of Family and Protective Services following an adversary hearing held as provided by Texas Family Code Section 262.201.

ARTICLE II  
TERMS

2.01 Definitions. Any capitalized term used in this Contract shall have the meaning set forth herein and in any Addendum.

ARTICLE III  
RELATIONSHIP OF THE PARTIES

3.01 Nature of the Relationship. The relationship of the Parties hereto shall be that of contracting parties. The Provider shall operate as an independent contractor to the [REDACTED] ISD and shall be responsible for delivering the services required by this Contract to the students assigned by [REDACTED] ISD. The Provider may not be the exclusive provider of such educational services to Pre-Kindergarten students. The relationship between and among the Parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Contract and such contracts and agreements as may be created in the future from time to time between the Parties and immortalized in writing, signed after receipt of the proper authority.

3.02 No Common Control. Neither Party is a division, subsidiary, affiliate, or any part of the other Party or has the right or authority to exercise any common control of any other Party. Nothing herein will be construed to create a partnership or joint venture by or between the [REDACTED] ISD and the Provider.

3.03 No Agency. Neither party shall be the agent of the other except to the extent otherwise specifically provided for by this Contract. Neither Party has the express or implied authority to represent to any third party, and will whenever needed disclaim to such parties, any ability to legally bind the other Party to any duty. Neither party shall be responsible for the acts of the employees or contractors of the other party.

3.04 Liaison. The [REDACTED] ISD liaison with authority to make day-to-day decisions and with the authority to observe the Provider's services under this Contract shall be the [REDACTED] ISD Assistant Superintendent Early Learning or his/her designees.

3.05 School Official Designation. For purposes of the Family Educational Rights and Privacy Act, ("FERPA"), the Provider is hereby designated as a "school official" with authority to create, revise, maintain, and access [REDACTED] ISD student records in accordance with the limitations in FERPA, for the students served by the Provider and dual-enrolled in [REDACTED] ISD, but only while the students are served by the Provider.

ARTICLE IV  
SERVICES PROVIDED BY THE PROVIDER

4.01 General Services To Be Provided. The Provider shall provide tuition-free Pre-Kindergarten educational services to eligible students identified by [REDACTED] ISD on a half-day basis, in the Provider's facilities identified below, and may choose to provide full-day services for students by accessing other sources of revenue, including, but not limited to, the Texas Workforce Commission, HeadStart, parents, or other sources. The Provider shall be responsible for all management and oversight of the day-to-day operations of its educational services, subject to review and observation by [REDACTED] ISD during the portion of the school day subject to this Contract. The Provider shall be responsible for students, staff, instructional programming, equipment and materials, buildings and facilities, record-keeping, grades and reports, testing, timely submitting to the [REDACTED] ISD any and all documentation and/or data required or requested, and any and all collaboration and/or communication with [REDACTED] ISD staff. The Provider acknowledges, agrees, and affirms that it is responsible for the operation and management of the educational services under this Contract and for ensuring compliance with all Applicable Law and Contract terms herein, and for ensuring all Contract terms herein are met. The Provider agrees it shall, at all times, provide services and keep records under this Contract in a manner which ensures that [REDACTED] ISD shall receive, and continue to receive, federal and state funding for the [REDACTED] ISD students served under this Contract. The parties agree that

should state or federal law changes result in a funding of full-day Pre-Kindergarten, then this Contract may be amended to provide for full-day Pre-Kindergarten.

4.02 Tuition-Free Services. The Provider shall provide half-day Pre-Kindergarten educational services to identified [REDACTED] ISD students on a tuition-free basis and may not charge tuition to parents for educational services or materials provided during the portion of the school day paid by [REDACTED] ISD as contemplated under this Contract. The Provider may also separately contract with parents to provide before-school, after-school, and non-instructional-day care on a fee basis.

4.03 Educational Service Provider Credentials. The Provider acknowledges and agrees it is accredited by the National Association for the Education of Young Children (NAEYC), the National Accreditation Commission (NAC), the National Early Childhood Program Accreditation (NECPA) to provide daily instruction; or Provider is accredited by a state agency to provide daily instruction and [REDACTED] ISD has acknowledged such accreditation is acceptable to it; Provider has Four Star certification under the Texas Rising Star Program for childcare providers; or Provider is an authorized Head Start site. The Provider asserts that it meets and agrees to continue to meet, all state licensing standards for child care facilities in Texas under Texas Human Resources Code Section 42.042 and applicable provisions of the Texas Administrative Code. Provider shall immediately notify [REDACTED] ISD if Provider's accreditation is revoked or withdrawn, and the parties agree that this Contract may be terminated at the sole discretion of [REDACTED] ISD upon such loss of accreditation or loss of authorization to serve as a Head Start site.

4.04 Provider's Facilities. The Provider shall provide all Pre-Kindergarten instruction at Provider's facilities located at [REDACTED].

4.05 Indemnity. **The Provider agrees that the indemnity provisions of the Agreement for Pre-Kindergarten Educational Services, Section 8, apply to any loss of funds due to non-compliance by the Provider.**

#### ARTICLE V APPLICABLE LAW

5.01. Applicable Law. The Parties agree to perform all obligations under this Contract in compliance with the applicable federal, state, and local laws, implementing regulations, executive orders, and interpreting authorities including, but not limited to, Title VI of the Civil Rights Act of 1964, as amended; Title VII of the Civil Rights Act; Title IX of the Education Amendments of 1974; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Americans with Disabilities Act; the Individuals with Disabilities in Education Act ("IDEA")(Child Find only); the Family Educational Rights and Privacy Act of 1974 ("FERPA"); the No Child Left Behind Act to the extent applicable to Pre-Kindergarten programs; the National Free and Reduced Lunch program; the Texas Education Code; the Texas Human Resources Code Chapter 42; record retention laws and conflicts of interest laws under the Texas Local Government Code; the Texas Public Information Act under the Texas Government Code; Texas Accessibility Standards; the Texas Administrative Code, to the extent that it applies to education service providers or day care facilities; City of [REDACTED] zoning, building, and fire safety codes; any other laws, rules, and guidelines applicable to the subject matter of this Contract; and any amendments, interpretations, and reauthorizations of the foregoing; and Texas Education Agency (hereafter "TEA") regulations, requirements, policies, and rules to the extent that they apply to education service providers providing instruction to Pre-Kindergarten students (collectively referred to herein as "Applicable Law" or "Applicable Laws").

ARTICLE VI  
APPLICABLE POLICIES

6.01 █████ ISD Policies and Procedures. The █████ ISD Board Policies may be found at <http://pol.tasb.org/Home/Index/361>. The █████ ISD's retention of the Provider is subject to applicable █████ ISD Board Policies. The students served by the Provider shall be █████ ISD students and are therefore subject to the █████ ISD Section F Board Policies.

6.02 █████ ISD Policies Applicable to the Provider. The Provider shall adhere to █████ ISD policies related to hours of instruction, the █████ ISD calendar of instruction, worker conduct, record-keeping, financial management, bilingual and ESL instruction (if applicable), records retention, special education (Child Find only), student discipline, criminal history record checks, PEIMS data collection and retention, student records, student-teacher ratios, attendance, accounting, Student Code of Conduct, compulsory attendance enforcement related to enrolled students, and student health and safety.

6.03 Additional Policies and Procedures. The Parties may collaborate to determine if any additional policies, procedures, or rules should apply to the Provider and whether any additional policies may need to be adopted by each Party to implement the Program. Upon final agreement, the list of additional policies, procedures, and rules shall be set forth in a written document, to be titled "Addendum B: Additional Policies and Procedures", and which shall be attached to the Contract.

6.03 Data Sharing Agreement. Provider agrees to execute and comply with the █████ ISD Data Sharing Agreement, included as Addendum C, with regard to the use of student data provided by █████ ISD or created by Provider.

6.04 Emergency Preparedness. For purposes of school closures and class cancellations due to emergencies and weather, the Provider will follow the █████ ISD procedure. Prior to the start of each school year, the Provider will notify the parents and students of this emergency preparedness procedure. The Provider will also comply with all emergency preparedness procedures, including but not limited to, fire drills, shelter-in-place drills, lockdowns etc., as required by state law or local ordinance for child-care facilities, or as may be required for Provider's national accreditation. The Provider shall ensure all faculty and staff providing services under this Contract are trained and receive information regarding these procedures.

ARTICLE VII  
STUDENT ELIGIBILITY AND ADMISSIONS PROCESS

7.01 Student Eligibility Requirements. Any child eligible for free Pre-Kindergarten under Texas Education Code Section 29.153, who lives within the █████ ISD boundary, shall be eligible to be served by the Provider. Once a Pre-Kindergarten child is enrolled, then the compulsory attendance laws apply to that child. The Provider will notify █████ ISD if an enrolled student's unexcused absences exceed the number allowed by law so that proper notices can be provided and proper procedures may be followed. In the event a student drops out of Provider's school, Provider shall provide notice to █████ ISD.

7.02 Admission and Enrollment.

a) *No Discrimination.* Any discrimination in admission on the basis of sex, national origin, ethnicity, race, religion, or disability is specifically prohibited, except as specifically designated in Texas Education Code Section 29.153.

b) *Transfers from outside the █████ ISD.* Education of students who reside outside the █████ ISD boundaries will not be allowed under this Contract.

c) *Enrollment Process.* Provider is responsible for identifying eligible students served by Provider under this Contract. Provider shall provide █████ ISD proper documentation, subject to █████ ISD's approval, that a student is eligible for dual-enrollment and shall further provide completed enrollment application documents as required by █████ ISD. Any compensation for services under this Contract shall be limited to compensation for those students for which Provider has submitted documentation acceptable to █████ ISD to determine eligibility and dual-enrollment status. In accordance with Applicable Law, students designated by █████ ISD as eligible to be served by the Provider shall be students who are eligible for free Pre-Kindergarten under the Texas Education Code Section 29.153(a), and who reside within the geographical boundaries of █████ ISD, but who are not currently being served in █████ ISD's Pre-Kindergarten program. █████ ISD agrees to make reasonable efforts to communicate its acceptance or denial of eligibility documentation; however, the Provider shall be responsible for ensuring all required documentation related to eligibility and enrollment is submitted to and accepted by █████ ISD. █████ ISD reserves the right to enroll any student eligible for educational services at a █████ ISD elementary school should a vacancy in a █████ ISD elementary school become available.

d) *Student Notification/Marketing.* █████ ISD shall use reasonable efforts to notify the parents of students who it is aware are eligible for free Pre-Kindergarten, but are not currently enrolled in █████ ISD of the opportunity for the student to receive educational services from the Provider. █████ ISD shall provide marketing and recruitment support for the Provider, to assist in attracting students and staff, when needed.

7.03 Student-Teacher Ratio. The Provider agrees that the ratio of students to appropriately trained and/or certified day-care instructor/teacher for any classroom in which the Provider provides educational services to █████ ISD students shall not exceed 24 – 1, and the Provider further agrees to include at least one educational aide in addition to the primary instructor for any classroom in which the Provider provides educational services to █████ ISD students.

7.04 Waivers. The Parties will collaborate and apply to TEA or any other applicable governmental authority for any waivers from current limitations and restrictions imposed by Applicable Law to permit students to receive educational services by the Provider which will expand the opportunities for eligible Pre-Kindergarten students.

7.05 Informational Materials. The Parties agree to collaborate on the development of information and materials to be provided to parents of students assigned to the Provider. No written recruitment or promotional materials may be published or disseminated without prior written approval of █████ ISD.

## ARTICLE VIII FACILITIES AND SUPPLIES

8.01 Facility Maintenance and Supplies. Any and all facility construction, maintenance, repair, and/or supplies, including but not limited to, the building and amenities, furniture, equipment, fixtures, alterations, school and/or office supplies, telephone systems, custodial services, copiers, maintenance, and the like, shall be the sole responsibility of the Provider.

8.02 Facility Standards. The Provider agrees to comply with the facility standards required for child-care facilities under federal, State, and local law or ordinance.

8.03 Access by █████ ISD. █████ ISD personnel shall have access to the Provider's facilities in which █████ ISD students are being served anytime during the hours of instruction under this Contract, to observe students and instruction.



ARTICLE IX  
PROGRAM DESCRIPTION

9.01 General Curriculum Description. The Provider shall provide instruction in accordance with the revised Texas Pre-Kindergarten Guidelines ("TEA Guidelines") issued by the Texas Education Agency (TEA) in 2008, or as subsequently modified.

9.02 Evaluation and Assessment. The Provider agrees to provide ██████ ISD with copies of any evaluation or assessment results for any ██████ ISD dual-enrolled students served by Provider subject to this Contract or for any classroom-based evaluation or assessment for a class that includes ██████ ISD dual-enrolled students. The Provider further agrees ██████ ISD shall have the right to conduct assessments of all dual-enrolled students provided educational services under this Contract; and Provider shall fully cooperate with any assessments conducted by ██████ ISD.

9.03 Instructional Materials. The Provider shall use the same curriculum, scope and sequence, and instructional materials as those used by ██████ ISD, or Provider may identify its own curriculum and instructional materials, subject to pre-approval by ██████ ISD teaching and learning staff. ██████ ISD agrees to provide to the Provider the curriculum and instructional materials necessary to implement the Pre-Kindergarten curriculum used in ██████ ISD Pre-Kindergarten classrooms. Materials provided by ██████ ISD must only be used in classrooms in which educational services are provided to ██████ ISD students.

9.04 Calendar and Times. The Provider will utilize the annual ██████ ISD school calendar for instructional days and teacher training days. The Provider shall utilize the same start and end times for Pre-Kindergarten instruction as the ██████ ISD utilizes for its Pre-Kindergarten classes. The Provider shall determine the work days and work hours of its own employees and contractors under Provider's direction and control.

9.05 Special Education.

a) *Special Education, Generally.* ██████ ISD agrees to coordinate with the Provider to offer special education and related services as required for students who qualify under Applicable Law. ██████ ISD may choose to have those services offered at the Provider's facility or at a ██████ ISD facility. The Provider shall ensure that it complies with all Applicable Law as it applies to special education, including, but not limited to, Child Find, assessment and evaluation, notices and meetings, the delivery of special education and related services, and student discipline. ██████ ISD and the Provider will collaborate on the specific manner and method such services are to be provided and administered. Such manner and method shall be written as "Addendum A" and attached to this Contract.

b) *Special Education Services, Generally.* Students served by the Provider shall receive all of their services in a general education Pre-Kindergarten classroom. Students served by the Provider who are determined by an ARD Committee to require a placement in a more restrictive setting, will be assigned to the appropriate ██████ ISD setting. Related service providers from ██████ ISD, at ██████ ISD's expense, may serve students determined by an ARD Committee to require related services. A student's Individualized Education Program (hereafter "IEP") shall be implemented and documented by the Provider.

9.06 Bilingual/ESL Programming. The Provider may offer bilingual/ESL programming for students who qualify, as required under Applicable Law and in accordance with the procedures identified in Addendum D of this Contract. The Provider acknowledges and agrees to ensure the services provided comply with all Applicable Law as it applies to bilingual/ESL programming for Pre-Kindergarten students. Teachers providing bilingual or ESL educational services shall be certified in bilingual or ESL education as required by the State Board for Educator Certification. If Provider does not offer bilingual/ESL programming in accordance with state requirements, a student who otherwise qualifies for such programs may continue to be served by the Provider if the parent so chooses, or student may be assigned to a bilingual/ESL program at a ██████ ISD campus.

9.07 Educational Technology. The Provider acknowledges and agrees to provide in each classroom the same or substantially similar educational technology, including but not limited to, computers, hardware, software, and network connections, as provided in a [REDACTED] ISD Pre-Kindergarten classroom. The Provider acknowledges and agrees it shall be responsible for any and all educational technology training its staff shall require. [REDACTED] ISD may, based on availability, provide the Provider with educational technology for use with [REDACTED] ISD students.

9.08 Free and Reduced Child Nutrition Services. [REDACTED] ISD and the Provider shall collaborate to ensure students served by the Provider are offered free and reduced breakfast and lunch services to dual-enrolled [REDACTED] ISD students who qualify as required under Applicable Law. The Provider shall comply with all Applicable Law as it applies to free and reduced breakfast and lunch services, including but not limited to, service, record-keeping, confidentiality, and nutritional value of foods served.

9.09 Police and Security Services. The Provider agrees to provide sufficient security measures.

## Article X TRANSPORTATION

10.01 Transportation. The Provider shall coordinate and be responsible for any and all transportation Provider chooses to provide to [REDACTED] ISD students served by the Provider.

10.02 Ownership of Transportation Vehicles. The [REDACTED] ISD and the Provider agree that the vehicles used to provide transportation to Provider's facilities are vehicles owned or leased and operated solely by the Provider and that neither the [REDACTED] ISD nor its employees own and/or operate such vehicles.

10.03 Transportation Employees. The [REDACTED] ISD and the Provider agree that all drivers of any vehicle used to provide transportation on behalf of the Provider are employees or contractors of the Provider and are not employees or contractors of the [REDACTED] ISD. The Provider agrees to comply with Applicable Law regarding criminal history background checks, driving checks, necessary licensure, school bus specifications, and other requirements relating to such providers of transportation.

10.04 Discipline of Students. The [REDACTED] ISD and the Provider agree that while in a Provider vehicle, students enrolled in [REDACTED] ISD are considered to be engaged in an extension of school or a school-related activity and are subject to the [REDACTED] ISD Code of Student Conduct.

10.05 Accidents or Injuries. The Provider agrees that if a vehicle transporting [REDACTED] ISD students served by the Provider is involved in any accident when students enrolled in [REDACTED] ISD are on board, then the Provider will notify within two hours the [REDACTED] ISD Superintendent of Schools or Designee. The Provider further agrees that if a [REDACTED] ISD student is injured in any way while in a Provider vehicle, the Provider will notify within two hours the [REDACTED] ISD Superintendent of Schools or Designee.

10.06 Indemnification. The Provider agrees that the indemnity provisions of the Agreement for Pre-Kindergarten Services, Section 8, apply to any and all transportation-related accidents or injuries for any transportation of [REDACTED] ISD students.

ARTICLE XI  
STUDENT DISCIPLINE

11.01 Student Code of Conduct. The Provider shall follow the [REDACTED] ISD Student Code of Conduct in the discipline of students. [REDACTED] ISD students assigned to Provider shall not be expelled for misconduct.

ARTICLE XII  
FACULTY AND STAFF

12.01 Employment Status of the Provider's Staff. The Provider acknowledges and agrees that any and all staff are the sole employees or contractors of the Provider and at no time shall they be employees of the [REDACTED] ISD. Furthermore, the [REDACTED] ISD faculty and staff are employees of the [REDACTED] ISD and not of the Provider.

12.02 Minimum Employee Standards. All employees of the Provider shall meet the applicable minimum standards established in the Texas Human Resources Code Chapter 42, and the implementing regulations.

12.03 Teacher Qualifications and Certification. The Provider shall comply with Applicable Law as it pertains to required teacher certification and qualifications and, if applicable, shall ensure any teachers providing special education or bilingual education are appropriately certified by the State Board for Educator Certification.

12.04 Teacher Training. The Provider shall provide to its employees and contractors providing educational services under this Contract all training required by law and regulations related to child-care facilities. Further, [REDACTED] ISD may, in its discretion, allow the Provider's faculty to attend training provided to [REDACTED] ISD Pre-Kindergarten teachers.

12.05 Criminal History Background. The Provider agrees to comply with all criminal history background checks as required by [REDACTED] ISD's Professional Services Agreement.

12.06 Faculty and Staff Employment Records. The Provider acknowledges and agrees the [REDACTED] ISD shall have a right of access to any and all employment records of the Provider's staff who have contact with [REDACTED] ISD students. The Provider further agrees to make immediately available to the [REDACTED] ISD such employment records upon request.

12.07 Employee Training. The Provider acknowledges and agrees that all faculty and staff will be trained as required by Texas Human Resources Code Chapter 42, and shall be trained in child abuse detection and reporting requirements, harassment/discrimination, Material Safety Data Sheet ("MSDS") matters, emergency preparedness and communicable diseases, in at least the same manner as [REDACTED] ISD employees. The Provider further agrees all faculty and staff shall be trained in any and all areas as required by any other Applicable Law.

12.08 Employee performance. The Provider agrees all faculty and staff providing services to [REDACTED] ISD students shall be evaluated and appraised at least annually. [REDACTED] ISD retains a right of access to such evaluations and appraisals, which the Provider shall make immediately available to the [REDACTED] ISD. The Provider shall allow [REDACTED] ISD to provide input into employee evaluations.

12.09 Grievances and Complaints. The [REDACTED] ISD and the Provider acknowledge and agree that neither the [REDACTED] ISD grievance process under [REDACTED] ISD Board policy DGBA, nor any other form of grievance or complaint process authorized under [REDACTED] ISD Board policy, shall be available to the Provider's employees or contractors. The Provider acknowledges and agrees it shall be solely responsible for determining how any and all employee grievances and/or complaints shall be resolved, and that the [REDACTED] ISD shall not be included in any employee grievance and/or complaint whatsoever.

12.10 Dual Employment. Except as otherwise agreed to between the [REDACTED] ISD and the Provider in writing, a person cannot be both an employee of the [REDACTED] ISD and the Provider.

ARTICLE XIII  
DATA, RECORDS, AND RECORDKEEPING

13.01 Texas Public Information Act (TPIA). The [REDACTED] ISD is subject to the TPIA as set forth in Texas Government Code Chapter 552. As a school district contractor, the Provider acknowledges and agrees that some records of Provider related to this Contract, and the services under this Contract, may be subject to disclosure. The Provider acknowledges and agrees to comply with the requirements of the TPIA, should a public information request be made of it, and understands the [REDACTED] ISD shall only be responsible for public information requests directed or submitted to the [REDACTED] ISD.

13.02 PEIMS Records. Pursuant to Texas Education Code Section 29.1532, the Provider agrees to comply with all Public Education Information Management System (PEIMS) requirements as it pertains to the [REDACTED] ISD students it serves under this Contract. The Provider acknowledges and agrees to provide to [REDACTED] ISD all data necessary to comply with PEIMS requirements for [REDACTED] ISD students receiving educational services under this Contract. This shall include, but shall not be limited to, daily attendance data forwarded to [REDACTED] ISD on a daily basis, enrollment data, demographic data, test scores, discipline records, special education and LEP records, and grade reports.

13.03 Texas Record Retention Laws. As to documents related to this Contract, and the Provider's services under this Contract, the Provider agrees to be subject to the Texas Record Retention laws as set forth in the Texas Government Code and Texas Local Government Code and related schedules for retention. The Provider agrees to comply with the requirements of the Texas Record Retention Laws and understands the [REDACTED] ISD shall only be responsible for maintaining and retaining records within its possession. The Provider agrees to coordinate with the home campuses of [REDACTED] ISD students served by the Provider to ensure required records are retained at the home campus.

13.04 Family Educational Rights and Privacy Act ("FERPA").

(a) The Provider acknowledges that [REDACTED] ISD students' records are confidential as to the public, and that parents have rights to their students' records pursuant to FERPA. The Provider agrees to comply in all respects with FERPA in its records maintained regarding [REDACTED] ISD students receiving educational services under this Contract and to take all necessary precautions to maintain the confidentiality of students' records. [REDACTED] ISD employees with legitimate educational needs to review student records or program information shall have access to student records at all times. The Provider agrees to comply with the provisions of the Data Sharing Agreement included as Addendum C to this Contract.

(b) The Provider acknowledges it may not re-disclose the information to a third party without prior written consent from the parent or eligible student. The Provider further acknowledges it must destroy any student information received from the District when no longer needed for the purposes listed in the Agreement.

(c) When information is actually given to the Provider, the following statement should be included on the cover page: This document contains personal information from a student's education records. It is protected by the Family Educational Rights and Privacy Act (20 U.S.C. section 1232g) and may not be re-released without prior written consent of the parent or eligible student.

13.05 Grade Reports. The Provider agrees to provide grade reports to parents whose children are receiving services under the Contract. The Provider further agrees to provide [REDACTED] ISD copies of all grade reports generated for students served under this Contract.

13.06 Reports to [REDACTED] ISD. The Provider shall provide quarterly and annual reports to [REDACTED] ISD regarding the effectiveness and efficiency of the educational services provided under this Contract. Said quarterly and annual reports shall include all information requested by [REDACTED] ISD, which shall be identified on an annual basis and may include: enrollment data, demographic data, attendance rates, achievement data, and discipline reports. [REDACTED] ISD shall use this data to determine the effectiveness of the program, including, but not limited to, student academic progress, whether student attendance meets or exceeds 95%, promotion and retention rates, and student disciplinary actions.

13.07 Financial Reports to [REDACTED] ISD. The Provider shall maintain financial information which indicates the utilization of [REDACTED] ISD funds, which shall be subject to [REDACTED] ISD's inspection and audit at any time. Upon request, the Provider shall provide [REDACTED] ISD with updated statements of assets and liabilities.

#### ARTICLE XIV MEDIA AND COMMUNICATIONS

14.01 Media Requests. The [REDACTED] ISD and the Provider agree to collaborate regarding any media request or press release related in any way to [REDACTED] ISD students receiving services under this Contract. The [REDACTED] ISD and the Provider agree to collaborate prior to responding to any media request or making a press release and further agree that any statement made will have prior approval by the [REDACTED] ISD Superintendent of Schools or designee. The Provider agrees to comply with all applicable state law and [REDACTED] ISD policies related to photographs or audio or video recording of students. The Provider further agrees to obtain fully-executed release forms from parents, on a form provided by [REDACTED] ISD, prior to any use of any photograph or audio or video recording of a [REDACTED] ISD student. At all times, Provider agrees it shall not represent itself as a representative or agent of [REDACTED] ISD and shall not use [REDACTED] ISD's name or logo without express written permission from [REDACTED] ISD.

#### ARTICLE XV PROGRAM EVALUATION AND ACCOUNTABILITY

15.01 Accountability Standards. Renewal of this Contract is conditioned upon satisfactory student performance under the accountability standards used to assess performance of [REDACTED] ISD Pre-Kindergarten programs, which shall include, but may not be limited to, assessment results from any assessment instrument required under Paragraph 9.02.

#### ARTICLE XVI FISCAL AFFAIRS

16.01 Financial Consideration. In consideration for the services provided by the Provider under this Contract, the [REDACTED] ISD shall pay the Provider 90 percent of the state allotment per student per day or half-day hereafter ("Fee") for each enrolled student in Provider's [REDACTED] ISD program for the school year. The Fee paid to the Provider under this Contract shall not be adjusted during a school year unless funding is reduced or increased by TEA, in which case, said Fee shall be adjusted accordingly. Should this Contract be renewed, and should [REDACTED] ISD realize an increase in overall funding during the Term of the Contract in any subsequent school year that results in an increase in per pupil ADA funding for the [REDACTED] ISD, the Parties may agree in writing to increase the Fee per student for that school year in an amount up to the percentage increase realized by the [REDACTED] ISD. However, in the event that [REDACTED] ISD realizes a decrease in overall funding during the Term of the Contract in any school year that results in a decrease in per pupil ADA funding for the [REDACTED] ISD, then the consideration for the services provided by the Provider under this Contract shall be decreased in the amount of percentage decrease realized by the [REDACTED] ISD.

16.02 Record-keeping Requirements/Invoices.

a) *Record-Keeping.* Pursuant to the █████ ISD Early Learning Department's schedule of invoices and payments, the Provider shall prepare and submit true and accurate invoices for payment of services provided under this Contract, and such invoices shall include all information identified in this Contract or later identified as necessary information by █████ ISD.

b) *Invoice submission.* The Provider shall keep complete and accurate records related to student attendance, student absences, and student tardies, as required for PEIMS compliance, as detailed in Section 13.02 of this Contract. The Provider shall base all invoices on the PEIMS data required under this Contract.

c) *Invoice Content.* Invoices shall contain the following itemized information: full information regarding student attendance during the preceding applicable period, including, but not limited to: facility providing educational services, educational services provided, student names, dates of attendance, student postal addresses, student ID numbers, itemized amount per student owed and total amount owed. Supporting documentation must also accompany the invoice. Dates of attendance reflected on the invoice must reflect only those dates on which █████ ISD is providing educational services to students in accordance with the █████ ISD calendar. The Provider shall provide the original PEIMS data submission as a cross-reference for the invoice. It is the Provider's responsibility to ensure that all information submitted is true and accurate. Each student's attendance data must match the student's information reflected in the invoice. All District guidelines, processes and procedures, state provisions, assurances, and Code of Ethics must be adhered to by the Provider.

d) *Student Data.* Baseline and progress data on students served by the Provider shall also be submitted at the same time the invoice is submitted. Said baseline and progress data shall be provided to the █████ ISD Office of Early Learning, in a form deemed acceptable by the Office of Early Learning.

e) *Monitoring/Audits.* The District reserves the right to audit the attendance data provided by the Provider, through either on-site checks or through document review.

f) *Responsibility for Accuracy.* The Provider has full responsibility and liability for the accuracy of the records submitted to the District for payment of invoices, including but not limited to all data required under Section 16.02(c) above. The Provider acknowledges that a failure to provide accurate records, and/or any misappropriation or attempted misappropriation of public funds when making invoice payment requests shall constitute a breach of this Contract and shall constitute sufficient cause for immediate termination of this Contract.

16.03 Payment Terms. The Provider shall submit invoices in accordance with the schedule provided by the █████ ISD Early Learning Department. Invoices may be submitted any time between the 1st and 15th day of the month. All invoices shall be for services already provided and shall be limited to payment for services provided in compliance with the terms of this Contract. To receive payment, the Provider shall send invoices to █████ ISD, specifying services covered by the invoices, and the Fee on such invoices shall not exceed the Fee identified in Paragraph 16.01. The District shall pay all undisputed invoices in accordance with the Texas Prompt Pay Act. The District's preferred method of payment will be through Electronic Funds Transfer (EFT) or E-payables.

16.04 Allocation of Costs. From the Fee, the Provider shall account for all costs associated with and

required to manage and operate this Contract, including but not limited to, facilities, furniture, equipment, fixtures, alterations, school and/or office supplies, instructional materials, telephone systems, janitorial service, copiers, general maintenance, building and facility maintenance, transportation, any and all employee and contractor salaries and benefits or other costs associated with personnel, and any and all other costs.

16.05 Contracting.

a) *General Contracting.* The Provider is responsible for obtaining, contracting with, and paying its own vendors for goods it acquires and services it provides under this Contract.

b) *Vendor Background Checks.* As described in Section 13.03(c), the Parties acknowledge that the █████ ISD requires criminal history background checks on all vendors and contractors who enter and perform work or services when said vendors or contractors could come into contact with █████ ISD students. The Provider shall communicate to and enforce with its vendors and contractors the criminal history background requirements and shall make such information immediately available to the █████ ISD upon request.

16.06 Annual Audit. The █████ ISD reserves the right to perform annual or other periodic audits of this Contract. The Provider shall cooperate with the █████ ISD in any audit and agrees to provide whatever financial and/or accounting documentation the █████ ISD requests.

ARTICLE XVII  
INTELLECTUAL PROPERTY MATTERS

17.01 Proprietary Materials. The █████ ISD shall own its own intellectual property, including but not limited to, trade secrets, know-how, proprietary data, documents and written materials in any format, artwork, graphics, charts, software, licenses, marketing materials, and website design for the █████ ISD. The Provider shall own its own intellectual property, including, without limitation, trade secrets, know-how, proprietary data, documents and written materials in any format, artwork, graphics, charts, software, licenses, marketing materials, and website design for the Provider. Any material created exclusively by the █████ ISD shall be the █████ ISD's proprietary material. Materials created exclusively by the Provider shall be the Provider's proprietary material. The █████ ISD and the Provider acknowledge and agree that neither entity has any intellectual property interest or claims in the other entity's proprietary materials. Notwithstanding the foregoing, materials and work product jointly created by the █████ ISD and the Provider shall be jointly owned by the entities and may be used by either entity as agreed upon by both entities from time to time.

ARTICLE XVIII  
INSURANCE AND INDEMNIFICATION

18.01 Insurance Coverage. The Provider, at its own expense, shall maintain insurance for the Provider throughout the Term of this Contract. The insurance purchased shall comply with all requirements identified in the Agreement for Pre-Kindergarten Educational Services at Section 10 and Exhibit D of the Agreement.

18.02 Evidence of Insurance. The Provider shall furnish a certificate of insurance to the █████ ISD evidencing the required coverage within ten (10) days after the execution of this Contract. Thereafter, the Provider shall provide to the █████ ISD a copy of the certificate for any renewal within thirty (30) days of receipt of same. The Provider shall provide written notice to the █████ ISD of any cancellation or material adverse change to such insurance within thirty (30) days of such occurrence.

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**18.03 Indemnification.** In addition to the agreements made in Section 8 of the Agreement for Pre-Kindergarten Educational Services, the Provider assumes full responsibility for the actions or inactions of its employees, officers, contractors, agents, vendors, assigns, or volunteers. The [REDACTED] ISD shall not be responsible for the negligence or liability of the Provider or Provider's employees, officers, contractors, agents, assigns, vendors, or volunteers. The Provider hereby WAIVES, RELEASES, and AGREES TO INDEMNIFY AND HOLD HARMLESS the [REDACTED] ISD for any loss or damages suffered by the Provider and any and all negligence or liability claim or claims, against either the Provider or [REDACTED] ISD, which may arise during the Term of this Contract, and which relate to the services the Provider provided under this Contract.

ARTICLE XIX  
HEALTH AND SAFETY

19.01 Health and Safety of Students. The Provider agrees to be subject to and will comply with all requirements of Chapter 38 of the Texas Education Code, and Chapter 42 of the Texas Human Resources Code. In the event that any [REDACTED] ISD student is injured, experiences problems with bullying, or otherwise encounters a situation in which the health and/or safety of that student is at issue, the Provider shall take immediate action to obtain help for the student or otherwise assist the student and work to quickly address any ensuing problems.

ARTICLE XX  
IMMUNITY AND RELEASE OF PARTIES

20.01 No Waiver of Immunity. Nothing in this Contract shall be construed to waive any immunity to which the [REDACTED] ISD, any employee of the [REDACTED] ISD, or any member of the [REDACTED] ISD Board of Trustees is entitled to under Applicable Law.

20.02 Release from Liability. To the extent permitted by Applicable Law, the Provider releases [REDACTED] ISD and all of its respective employees, officers, directors, trustees, subcontractors, and agents from any losses, liabilities, damages, and claims that may arise out of, or by reason of, any act or omission of the Provider under this Contract. This release applies only to the extent that it reiterates existing law and enforces each Party's obligations as may be permitted by law. To the extent that this provision purports to create liability or potential liability on the part of [REDACTED] ISD beyond its legal authority or power to incur liability, this Section 20.02 is invalid.

ARTICLE XXI  
TERM OF THE CONTRACT; TERMINATION

21.01 Term. This Contract shall be for a term of three (3) school years commencing on the Effective Date and expiring on the last day of the regular – \_\_\_\_\_ school year ("Initial Term"), subject to earlier termination as identified in this Contract. After the Initial Term, this Contract may be renewed for up to two (2) successive three (3) year renewal terms (each a "Renewal Term") provided that: (a) the [REDACTED] ISD Board of Trustees and the Provider signify their desire to renew the Contract in writing at least 180 days before the expiration of the Contract; and (b) the Contract is in full force and effect at the time of the renewal notice and at the time the next Renewal Term is to be effective and neither the [REDACTED] ISD nor the Provider is then in default under the Contract either at the time that renewal notice is given or on the last day of the then-current Initial Term or Renewal Term. As used herein, the word "Term" includes the Initial Term and any and all Renewal Terms. The Term of this Contract is subject to the Termination provisions below.



21.02 Termination.

(a) *Termination Rights.* Either the █████ ISD or the Provider may terminate this Contract in the event that:

(i) The other Party fails to remedy a breach of this Contract, which includes the failure of a Party to fulfill any material obligation, condition, term, provision, or covenant contained in this Contract within thirty (30) calendar days after written notice by the non-breaching Party of such breach or non-fulfillment; or

(ii) The █████ ISD has a material reduction in per-pupil ADA funding available from the State of Texas below the amount for the prior fiscal year. For purposes of this Section 21.02(a)(ii), a material reduction is considered to have occurred if the █████ ISD's per-pupil ADA funding is reduced by more than five percent of current funding per student per half day. In lieu of termination under this Section 21.02(a)(ii), the Parties may elect to reduce the amount to be paid to the Provider by the █████ ISD under Section 16.01 to the reduced per-pupil ADA amount received by the █████ ISD.

(iii) In the event of termination under Section 21.02(a) above, such termination shall be effective 30 days after notice to the Provider of the breach or the inability to achieve a reduction in the Fee.

(b) *Termination by Mutual Written Consent.* This Contract may be terminated by mutual consent by both Parties without penalty to either the █████ ISD or the Provider, such termination to be effective at such time, and upon such other terms, as set forth in such written consent.

(c) *Termination for Failure to Show Improvement.* At the end of any academic year, the █████ ISD may terminate this Contract if students served by the Provider fail to show continuous improvement and/or fail to achieve at least one (1) year's growth in performance. In the event of termination under this Section 21.02(d), the █████ ISD shall provide written notice to the Provider on or before thirty (30) days prior to the effective date of termination.

(d) *Bankruptcy: Dissolution.* This Contract will terminate immediately upon the (i) filing by any party of a voluntary petition in bankruptcy; (ii) adjudication of such party as bankrupt; (iii) the filing of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment, or composition of, or in respect of such Party under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors' rights generally; (iv) appointment of a receiver, trustee or other similar official of such Party or its property; or (v) the dissolution of its corporate entity.

(e) *Termination for Failure to Maintain Accreditation.* This Contract may be terminated at the sole discretion of █████ ISD upon the loss of accreditation by Provider from any and all accreditation agencies, as noted in Paragraph 4.03. This Contract may also be terminated should Provider no longer maintain Four Star status in Texas' Rising Star Program for child care providers.

(f) *Change in Applicable Law.* If any change in Applicable Law enacted after the Effective Date could reasonably be expected to have a material adverse effect on the ability of either Party to carry out its obligations under this Contract, including but not limited to, the repeal of authority for the █████ ISD Board of Trustees to contract for educational services, then either Party, at its election, and upon written notice to the other Party (which notice may be given at any time following enactment of such change in Applicable Law), may terminate this Contract or request renegotiation of this Contract. Such renegotiation will be undertaken in good faith. If the Party elects renegotiation and the Parties are unable to renegotiate and agree upon revised terms within thirty (30) days after such notice of renegotiation, then this Contract will be terminated effective at the end of the school year in which such notice was given, unless earlier termination is necessary to protect the health, welfare, or safety of students.

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(g) *Termination for Convenience.* █████ ISD may terminate this Contract at any time for convenience without cause or penalty by giving the Provider written notice.

(h) *Termination for Non-Appropriation.* The obligations for payment by the █████ ISD to the Provider under this Contract constitute a commitment of current revenues only and does not create an impermissible debt. As such, the █████ ISD may terminate this Contract at the end of any fiscal year during the term of the Contract in the Event of Non-Appropriation or in the event insufficient students enroll to generate sufficient monies to operate this Contract. As used herein, the term "Event of Non-Appropriation" shall mean the failure of the █████ ISD to obtain and appropriate funds for this Contract. In the Event of Non-Appropriation, the █████ ISD shall give as much notice as reasonably possible.

(i) *Termination for Misappropriation.* █████ ISD may terminate this Contract for misappropriation of █████ ISD funds upon thirty (30) days written notice of said misappropriation.

#### 21.03 Effect of Termination.

(a) In the event of termination under this Contract, the obligations under this Contract will terminate, except that any obligations that survive termination shall be completed, including but not limited to, finalizing any reporting requirements for data imposed by TEA, PEIMS data, record retention requirements, FERPA, and public information requests.

(b) As of the date of termination of this Agreement, Provider shall furnish to District all statements, accounts, reports, and other materials as are required hereunder or as have been prepared by Provider in connection with its responsibilities hereunder. In the event of termination of this Agreement or upon completion of the work hereunder, the District may, at all times, retain the originals of all such materials. All such materials are the property of the District. They are not to be used by any person other than the District on other projects unless expressly authorized by the District.

21.04 Suspension of Educational Services for the Convenience of the District. District may, without cause, order the Provider in writing to suspend, delay or interrupt the Work in whole or in part for such time period as District may determine. Provider shall be compensated for all services actually performed prior to receipt of written notice from District of such suspension, delay or interruption, together with any reimbursable expenses then due. If the Work is resumed after being suspended, delayed or interrupted for more than three months, the Provider's compensation may be equitably adjusted if, in the District's reasonable opinion, such adjustment is warranted. No adjustment shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Provider is responsible.

### ARTICLE XXII GENERAL AND MISCELLANEOUS PROVISIONS

22.01 Jurisdiction and Venue. The Parties consent and submit to the sole exclusive jurisdiction and venue of the state and federal courts located in █████ County, Texas, for purposes of any action, suit or proceeding arising out of or relating to this Contract.

22.02 Governing Law. The laws of the State of Texas, without regard to its conflict of laws provisions, will govern this Contract, its construction, and the determination of any rights, duties, obligations, and remedies of the Parties arising out of or relating to this Contract.

22.03 Counterparts, Facsimile Transmissions. This Contract may be executed in identical counterparts, all of which will be deemed an original, but all of which will constitute one and the same instrument. Each Party may rely on facsimile signature pages as if such facsimile pages were originals.

22.04 Official Notices. All notices, consents, approvals, demands, requests, or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

**For [REDACTED] ISD:**

[REDACTED]

Superintendent

[REDACTED]

[REDACTED] TX [REDACTED]

Telephone: [REDACTED]

Facsimile:

Email:

**With a copy to:**

[REDACTED]

Assistant Superintendent, Early Learning

[REDACTED]

[REDACTED] Texas [REDACTED]

Telephone: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED] org

**Copies also to:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Texas [REDACTED]

Telephone: [REDACTED]

Facsimile: [REDACTED]

Email: [REDACTED]

**For the Provider:**

[REDACTED]

**Copies also to:**

[REDACTED]

22.06 Amendment. This Contract will not be altered, amended, modified, or supplemented except in a written document executed by the Parties.

22.07 Waiver. No waiver of any provision of this Contract will be effective unless in writing, nor will such waiver constitute a waiver of any other provision of this Contract, nor will such waiver constitute a continuing waiver unless otherwise expressly stated.

22.08 Severability. The Parties intend that each provision hereof constitute a separate agreement between or among them. Accordingly, the provisions hereof are severable and in the event that any provision of this Contract shall be deemed invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions hereof will not be affected, but will, subject to the discretion of such court, remain in full force and effect, and any invalid or unenforceable provision will be deemed, without further action on the part of the Parties, amended and limited to the extent necessary to render the same valid and enforceable and reflect the intent of the Parties.

22.09 Successors and Assigns. This Contract will be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

22.10 No Third-Party Rights. This Contract is made for the sole benefit of the [REDACTED] ISD and the Provider and their respective successors and permitted assigns. Nothing in this Contract will create or be deemed to create a relationship between the Parties to this Contract and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.

22.11 Headings and Captions. The headings and captions appearing in this Contract have been included only for convenience and shall not affect or be taken into account in the interpretation of this Contract.

IN WITNESS WHEREOF, the undersigned have executed this Contract as of [REDACTED], 2015.

By: [REDACTED]  
(PRINT NAME OF PERSON SIGNING FOR VENDOR)  
FOOTNOTE)

By: [REDACTED]  
(PRINT NAME OF REPRESENTATIVE- SEE

Signature: [REDACTED]  
(VENDOR REPRESENTATIVE SIGNATURE)

Signature: [REDACTED]<sup>2</sup>  
(DISTRICT REPRESENTATIVE SIGNATURE)

Title: [REDACTED]  
(TITLE OF VENDOR'S REPRESENTATIVE)

Title: [REDACTED]  
(TITLE OF DISTRICT REPRESENTATIVE)

[REDACTED] School Attorney:  
Approved as to form.

By:

[REDACTED]  
(SIGNATURE OF SCHOOL ATTORNEY)

<sup>2</sup> The District Representative per Signature Delegation Memo signs after School Attorney.

ADDENDUM A  
Agreement Regarding Special Education and Section 504 Students

This Addendum A Agreement Regarding Special Education and Section 504 Services ("Agreement") is a part of and incorporated into the Educational Services Contract ("Contract") by and between the ██████ Independent School District ("█████ ISD") and the Provider ("the Provider") (individually, "Party" and collectively "Parties") with an effective date of ██████. All capitalized terms not otherwise defined herein shall have the same meanings as such term in the Contract.

This Agreement sets forth the duties and responsibilities of the Provider regarding the provision of special education and/or Section 504 services to students enrolled in the Provider's Pre-Kindergarten Program during the Term of the Contract. This Agreement addresses the responsibilities of the Provider and the Provider under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*; its implementing regulations, 34 C.F.R. §300.1 *et seq.*; Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 794; its implementing regulations, 34 C.F.R. § 104.1 *et seq.*; and with regard to state law concerning students with dyslexia.

I. Special Education

A. Child Find, Referral and Evaluation

1. The Provider shall create and implement child find activities to identify students eligible for special education services.
2. The Provider shall create and implement response to intervention (RTI) activities.
3. Any time the Provider or the Provider faculty and/or staff suspects a student has a disability that may result in a need for special education and related services, the student will be referred to the ██████ ISD special education coordinator for an evaluation.
4. ██████ ISD special education staff and the Provider will work collaboratively to determine the appropriate course of action regarding a special education evaluation.
5. If the Provider and ██████ ISD working in collaboration determine a full and individual evaluation ("FIE") should be performed, ██████ ISD staff will provide notice to the parent, seek all necessary consents, and perform the evaluation.
6. The Provider staff will cooperate fully and provide any and all information requested by ██████ ISD staff as part of the evaluation such as, but not limited to, completion of questionnaires and checklists, classwork and other information, and observations in the classroom.
7. ██████ ISD staff will prepare the FIE report and provide a copy to the parent. When the report is completed, ██████ ISD staff and the Provider staff will meet to review the evaluation prior to the Admission, Review and Dismissal ("ARD") Committee meeting to determine eligibility.

B. ARD Committee Meetings

1. ██████ ISD staff and the Provider staff will collaborate to schedule ARD Committee meetings at a mutually convenient time to the ██████ ISD, the Provider and the parent.
2. ██████ ISD will handle the scheduling and notices for ARD Committee meetings in the Provider's Pre-Kindergarten program.
3. If the parent or teacher of a the Pre-Kindergarten program requests an ARD Committee meeting, the Provider staff will make reasonable effort to forward the request to the ██████ ISD staff within one business day and the ██████ ISD staff will schedule and send required notices and other documents regarding the ARD Committee meeting.
4. The notice of ARD Committee meeting may list the Provider staff or ██████ ISD staff for the parent to call with any questions.
5. ██████ ISD staff and the Provider staff will meet prior to ARD Committee meetings to review information about students.

6. The members of the ARD Committee will be those required under federal and state law and may include both [REDACTED] ISD staff and the Provider staff. Whenever possible, the representative of administration will be from [REDACTED] ISD's central special education staff. The Provider will also have an administrator present at ARD Committee meetings.
7. [REDACTED] ISD staff will complete and maintain all required paperwork and documentation associated with ARD Committee meetings. Staff of both Parties with a legitimate educational interest will have access to a student's ARD Committee and special education documentation.

#### C. Implementation of Special Education Services

1. Individualized Education Programs ("IEPs") will be developed by a student's ARD committee.
2. The Provider staff will implement the student's IEP including, but not limited to, accommodations, modifications and in-class support. The Provider will provide certified special education teachers for any student that requires special education as necessary to implement the IEP.
3. If a special education student's IEP includes special education services that cannot be provided by the Provider, those services will be provided by [REDACTED] ISD staff, including related services as that term is defined by the IDEA, and all services in the Texas autism supplement determined by the ARD Committee to be appropriate for the student.
4. [REDACTED] ISD staff and the Provider staff will coordinate and collaborate with each other regarding the provision of special education services to a student.
5. The Provider staff will immediately inform [REDACTED] ISD staff if a special education student is removed for then (10) or more consecutive or cumulative days within the school year for disciplinary reasons. If an ARD Committee meeting is necessary to perform a manifestation determination review ("MDR"), both Parties will collaborate to hold the MDR within the timelines required by the IDEA.
6. The Provider shall be responsible for documenting any days a student is removed from the student's regular placement for disciplinary reasons.

#### D. Monitoring IEP Implementation and Student Progress

1. The Provider and [REDACTED] ISD staff will meet at regular intervals to monitor and discuss student progress, discuss student and special education program issues, and ARD Committee meetings to be scheduled. These meetings will be scheduled at intervals to be determined mutually by both Parties.
2. [REDACTED] ISD staff and the Provider staff will share with each other communications and information from parents and others about special education students.
3. [REDACTED] ISD and the Provider staff will collect data regarding the implementation of the IEP for each special education student. The Parties will collaborate regarding an effective data collection system for special education students, following the procedures of the [REDACTED] ISD for data collection.

## II. Section 504

### A. Child Find, Referral and Evaluation

1. █████ ISD and the Provider will collaborate to develop child find activities using the current systems and procedures of █████ ISD.
2. The Provider staff will conduct response to intervention (RtI) activities using █████ ISD's systems and procedures, including the use of a referral committee identified by the Provider.
3. At any time the Provider staff suspects a student has a disability and may need a Section 504 evaluation, the Provider staff will immediately refer the student to █████ ISD.
4. The Parties will work collaboratively to determine the appropriate course of action regarding a Section 504 evaluation.
5. If the Parties determine a Section 504 evaluation should be performed, █████ ISD staff will provide notice to the parent, seek all necessary consents, and perform the Section 504 evaluation.
6. The Provider personnel will cooperate fully and provide any and all information requested by █████ ISD staff as part of the evaluation such as, but not limited to, completion of questionnaires and checklists, classwork and other information, and observations in the classroom.
7. █████ ISD staff will prepare the Section 504 evaluation documents. When the evaluation is complete, █████ ID and the Provider's staff will meet to review the evaluation before the Section 504 Committee meets to review the evaluation information and determine eligibility under Section 504.

### B. The Section 504 Committee

1. █████ ISD and the Provider's staff will collaborate to schedule Section 504 meetings at a time mutually convenient to the Parties.
2. █████ ISD will coordinate the scheduling and notices for Section 504 Committee meetings and implement procedures for Section 504 Committee meetings for students in the Pre-Kindergarten program.
3. If the parent or teacher of a student in the Pre-Kindergarten program requests a Section 504 Committee meeting, the Provider staff will make reasonable effort to forward the request to █████ ISD staff within one business day and █████ ISD staff will schedule and send required notices and other documents regarding the Section 504 Committee meeting.
4. The notice of the Section 504 Committee meeting may list █████ ISD and the Provider staff for the parent to call with any questions.
5. █████ ISD and the Provider's staff will meet prior to Section 504 Committee meetings to review information about students.
6. The members of the Section 504 Committee will be those required by federal law and will include both the Provider and █████ ISD staff. The Section 504 Committee will be chaired by a █████ ISD staff person.
7. █████ ISD staff will complete and maintain all paperwork and documentation associated with Section 504 Committee meetings. Staff of both Parties with a legitimate educational interest will have access to a student's Section 504 documentation.

C. Implementation of Section 504 Services

1. Section 504 plans will be developed by the student's 504 Committee using [REDACTED] ISD's forms and procedures.
2. The Provider staff will implement the student's Section 504 plan including, but not limited to, accommodations, modifications and in-class support.
3. Services in a student's Section 504 plan that cannot be provided by the Provider will be implemented by [REDACTED] ISD staff.
4. Both Parties will coordinate and collaborate with each other regarding the provision of services in the Section 504 plan to a student in the Pre-Kindergarten program.
5. The Provider staff will immediately inform [REDACTED] ISD campus staff of any removal of a Section 504 student for ten (10) or more consecutive or cumulative days within a school year for disciplinary reasons. If a Section 504 Committee meeting is necessary to perform a manifestation determination in the case of a proposed change of placement of a Section 504 student, both Parties will collaborate to hold the Section 504 Committee meeting in a timely manner.

D. Monitoring Implementation of a Section 504 Plan

1. [REDACTED] ISD staff and the Provider staff will meet at regular intervals to be determined by the Parties to monitor and discuss student progress, discuss student and Section 504 issues, and Section 504 Committee meetings to be scheduled.
2. [REDACTED] ISD and the Provider's staff will share with each other any communications and/or information from parents and others about Section 504 students.
3. [REDACTED] ISD and the Provider staff will collect data regarding the implementation of the 504 Plans for students in the Pre-Kindergarten program. The Parties will collaborate regarding an effective data collection system for Section 504 students, following the procedures of the [REDACTED] ISD.

III. TEA Complaints, Due Process Hearings and State and Federal Court Litigation

- A. [REDACTED] ISD staff will prepare a response to all complaints to the Texas Education Agency ("TEA") regarding a special education student. The Provider staff will cooperate to the fullest extent to provide information and documentation requested by [REDACTED] ISD at no cost to the [REDACTED] ISD. If TEA implements corrective action, the Provider staff will cooperate and participate in implementing corrective action applicable to the Provider's Pre-Kindergarten program.
- B. If an IDEA special education due process hearing is requested regarding an issue involving a student in the Provider's Pre-Kindergarten program, [REDACTED] ISD will assume the responsibility of defending the action. The Provider will cooperate to the fullest extent in preparing for and conducting the due process hearing and any subsequent appeal into court, including, but not limited to, attending the resolution session and testifying in the due process hearing, at no cost to [REDACTED] ISD.
- C. If mediation is requested regarding a special education student in the Provider's Pre-Kindergarten program, [REDACTED] ISD will assume responsibility for conducting the mediation. The Provider staff will cooperate to the fullest extent in the mediation, including, but not limited to, preparing for and attending mediation, at no cost to [REDACTED] ISD.



- D. If a complaint is made to the U.S. Department of Education's Office for Civil Rights ("OCR") regarding a special education (Child Find) and/or Section 504 student in the Provider's Pre-Kindergarten program, [REDACTED] ISD staff will prepare a response to the complaint. The Provider staff will cooperate to the fullest extent with [REDACTED] ISD staff to respond to the complaint at no cost to [REDACTED] ISD, and will implement corrective action, if any, determined by OCR to be required.
- E. If a Section 504 hearing is requested regarding the Provider student, [REDACTED] ISD staff will assume the responsibility of defending the action. The Provider staff will cooperate to the fullest extent with [REDACTED] ISD staff in preparing for and conducting the Section 504 hearing, including, but not limited to, testifying in the Section 504 hearing, at no cost to [REDACTED] ISD.
- F. If an action is filed in state or federal court under the IDEA and/or Section 504 regarding a student in the Provider's Pre-Kindergarten program, [REDACTED] ISD will defend the action. The Provider staff will cooperate fully in the defense of the lawsuit at no cost to [REDACTED] ISD.

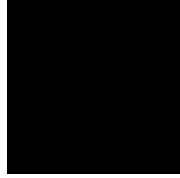
#### IV. Training

- A. The Parties agree that collaborative training of the two staffs is important for the success of the Provider's Pre-Kindergarten program.
- B. [REDACTED] ISD will notify Provider of trainings to be provided and the Provider staff shall attend [REDACTED] ISD's training sessions as agreed by the Parties.
- C. The Provider will make its staff available for training by [REDACTED] ISD on IEP writing, the development of standards-based IEPs, and [REDACTED] ISD's special education software system and procedural and substantive forms applicable to IDEA special education students and Section 504 students.

ADDENDUM B  
Additional Policies

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ADDENDUM C  
Data Sharing Agreement



■■■■ INDEPENDENT SCHOOL DISTRICT  
DATA SHARING AGREEMENT

THIS AGREEMENT is entered into on this the (DD)<sup>th</sup> day of (MONTH), 2015, by and between [VENDOR NAME] herein called “[Shorthand Reference to Vendor],” and the ■■■■ Independent School District, herein called “District” or “■■■■ ISD” for the period [FILL IN DISTRICT AGREEMENT START MM/DD/YY through FILL IN DISTRICT AGREEMENT END MM/DD/YYYY]. The parties hereto agree as follows:

1. [Shorthand Reference to Vendor] has entered into an Agreement with the District to provide the following services: pre-Kindergarten Educational Services, to complete the work required under the Agreement, [Shorthand Reference to Vendor] will require access to District data.
2. The release of District employee information must be in compliance with all applicable laws and regulations, including, but not limited to, the Texas Education Code, Section 21.355 and Texas Government Code, Section 552.117.
3. The release of personally identifiable information of students must be in compliance with the requirements of the Family Educational Rights and Privacy Act (FERPA).
4. FERPA permits the disclosure of personally identifiable information of students to school officials with legitimate educational interests in students’ education records. The term “school official” includes contractors, consultants, volunteers, or other parties to whom an educational agency or institution has outsourced institutional services or provided that the outside party--
  - (1) Performs a District service or function for which the District would otherwise use employees;
  - (2) Is under the direct control of the District with respect to the use and maintenance of education records; and
  - (3) Is subject to the requirements governing the use and redisclosure of personally identifiable information from education records. 20 U.S.C. 1232g(b)(1)(A).
5. Student Confidentiality: The ■■■■ ISD has a legal obligation to maintain the confidentiality and privacy of student records in accordance with applicable law and regulations, specifically the Family Educational Rights and Privacy Act (FERPA). [Shorthand Reference to Vendor] and its authorized representatives may only receive student information in compliance with the requirements and exceptions outlined in FERPA. [Shorthand Reference to Vendor] and its authorized representatives acknowledge that they must comply with said law and regulations and safeguard student information. [Shorthand Reference to Vendor] and its authorized representatives may not re-disclose the information to a third party without prior written consent from the ■■■■ ISD, the parent or eligible student. [Shorthand Reference to Vendor] and its authorized representatives must destroy any student information received from the ■■■■ Independent School District when no longer needed for the purposes listed in this Agreement. [Shorthand Reference to Vendor] and its authorized representatives must maintain the confidentiality of the student records according to commercially reasonable administrative,

physical and technical standards that are no less rigorous than the standards by which [Shorthand Reference to Vendor] protects its own confidential information.

6. [REDACTED] ISD will provide the following information to the [Shorthand Reference to Vendor]:
  - [Fill in blanks]
  - 
  - 
  -
7. [Shorthand Reference to Vendor] acknowledges that the personally identifiable information from education records provided by the [REDACTED] ISD may only be used to meet the purpose stated in term 1 in this Agreement.
8. If [VENDOR] wants to conduct a survey of students, [VENDOR] acknowledges that all student surveys will be in compliance with the requirements of the Protection of Pupil Rights Amendment (PPRA). In the event that any Department of Education funding is used for this program, prior written parental consent will be obtained before surveying a student on any of the following topics:
  1. Political affiliations;
  2. Mental and psychological problems potentially embarrassing to the student and his/her family;
  3. Sexual behavior and attitudes;
  4. Illegal, anti-social, self-incriminating and demeaning behavior;
  5. Critical appraisals of other individuals with whom respondents have close family relationships;
  6. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; or
  7. Religious practices, affiliations, or beliefs of the student or parents; or
  8. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

The protected categories may also be expanded by future amendments to the PPRA. Parents will have the opportunity to inspect the survey created by a third party before the survey is administered or distributed to the student regardless of the funding source.
9. [Shorthand Reference to Vendor] must destroy all personally identifiable information from education records when the information is no longer needed to perform the services outlined in term 1 above. The destruction must occur within 30 days. The [REDACTED] ISD will provide input on the specific time period for destruction based on the facts and circumstances surrounding the disclosure and study. The destruction must be in accordance with the [REDACTED] ISD's records retention policies and procedures. The parties may agree to amend the agreement to extend the time period if needed, but the agreement must include a time limit.
10. [Shorthand Reference to Vendor] designates the following individual or entity as an authorized representative: [FILL IN NAME, Title]. The authorized representative has authority to bind the entity to the requirements of this agreement. The authorized representative shall also require individuals accessing the personally identifiable information from education records to execute affidavits of nondisclosure or other documentation indicating their individual agreement to handle the personally identifiable information from education records properly.
11. [Shorthand Reference to Vendor] must provide [REDACTED] ISD with a copy of policies and procedures, consistent with FERPA and other Federal and State confidentiality and privacy provisions, that will be used to protect personally identifiable information from education records from further disclosure (except back to the [REDACTED] ISD) and

unauthorized use, including limiting the use of personally identifiable information from education records to only authorized representatives with legitimate interests in the term 1.

12. Approval to use the personally identifiable information from education records for one Agreement does not confer approval to use the data for another Agreement. The personally identifiable information from education records may only be used for the activities described in this Agreement.
13. The points of contact and data custodians (the individuals directly responsible for managing the data in question) are:

District: [REDACTED]  
Chief Technology Officer  
[REDACTED]  
[REDACTED]@[REDACTED].org

[Shorthand Refer to Vendor]:[Name OF Contact]  
Address  
Contact Number

14. The disclosure of personally identifiable information from education records to [Shorthand Reference to Vendor] is not an assignment of ownership of the personally identifiable information or records to [Shorthand Reference to Vendor]. The [REDACTED] ISD retains ownership of all such records. Personally identifiable information from education records may only be redisclosed with the [REDACTED] ISD's permission or in compliance with FERPA and its regulations.
15. The [REDACTED] ISD maintains the right to conduct audits or otherwise monitor the [Shorthand Reference to Vendor] receiving personally identifiable information from education records to periodically affirm that the [Shorthand Reference to Vendor] has appropriate policies and procedures in place to protect the personally identifiable information from education records.
16. The failure to comply with the requirements of FERPA will subject the third party to all allowable penalties under state and federal law. In the event that District data is compromised and/or released to an unauthorized individual, [Shorthand Reference to Vendor] must alert Chief Technology Officer upon notification of the breach as soon as practical. [Shorthand Reference to Vendor] will promptly notify [REDACTED] ISD of any breach and promptly take steps to access the scope and impact of any beach. [Shorthand Reference to Vendor] will take commercially reasonable steps to limit the impact and will update [REDACTED] ISD on progress.
17. **[Shorthand Reference to Vendor] shall defend and hold District harmless from all claims, liabilities, damages, or judgments involving a third party, including District's costs and attorney fees, which arise as a result of [Shorthand Reference to Vendor]'s failure to meet any of its obligations under this agreement.**
18. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas, and the parties hereto agree that venue shall be in [REDACTED] County, Texas.

*By signing, I certify that I have read and agree with the terms of the Data Sharing Agreement and I am authorized to sign and execute on behalf of my institution.*

█ Independent School District

[VENDOR]

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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ADDENDUM D  
Agreement Regarding Bilingual or ESL Students

If the Provider offers a bilingual or ESL program for students, this Addendum D Agreement Regarding Bilingual and ESL Students ("Agreement") is a part of and incorporated into the Educational Services Contract ("Contract") by and between the [REDACTED] Independent School District ("[REDACTED] ISD") and the Provider ("the Provider") (individually, "Party" and collectively "Parties") with an effective date of [REDACTED]. All capitalized terms not otherwise defined herein shall have the same meanings as such term in the Contract.

This Agreement sets forth the duties and responsibilities of the [REDACTED] ISD and the Provider regarding the provision of Bilingual and ESL educational services to students enrolled at the Provider's facility during the Term of the Contract. This Agreement addresses the responsibilities of the [REDACTED] ISD and the Provider under Title III of the No Child Left Behind Act, Chapter 29 of the Texas Education Code, Chapter 89 of Texas Administrative Code and applicable provisions of the [REDACTED] ISD local policy regarding educating English Language Learners.

A. Identification of English Language Learners (ELLs)

1. For any student who indicates a language other than English on the Home Language Survey (HLS), the Provider shall administer all four parts of the English Woodcock-Muñoz Language Survey - Revised (WMLS-R) to the student within the time frame identified by [REDACTED] ISD.
2. [REDACTED] ISD staff will work collaboratively with the Provider to ensure parents of ELLs receive all required notices related to the student's identification and placement.
3. The Provider shall comply with all requests for information from [REDACTED] ISD staff related to student classifications based on language proficiency assessment.

B. LPAC Committee

1. The Provider shall work collaboratively with [REDACTED] ISD staff to establish a Language Proficiency Assessment Committee (LPAC) for students assigned to the Provider.
2. The [REDACTED] ISD LPAC will oversee and/or determine matters related to student identification, placement, review, and reclassification.
3. The members of an LPAC committee will be those required by law and [REDACTED] ISD Policy and may include both [REDACTED] ISD staff and the Provider's staff.
4. No parent serving on the LPAC shall be an employee of [REDACTED] ISD or the Provider. All members of an LPAC, including parents, shall be acting for [REDACTED] ISD and shall observe all laws and rules governing confidentiality of information concerning individual students.
5. The Provider shall ensure that any of its staff who are LPAC members will attend all required training and orientation sessions provided by [REDACTED] ISD for LPAC members.
6. [REDACTED] ISD staff and the Provider staff will collaborate to schedule all required LPAC meetings at a mutually convenient time to the [REDACTED] ISD, the Provider and the parent.
7. [REDACTED] ISD staff will be responsible for scheduling and notices for LPAC meetings for students in the Provider's Pre-Kindergarten program.

8. [REDACTED] ISD staff shall create and maintain all required paperwork and documentation associated with LPAC meetings. Staff of both Parties with a legitimate educational interest will have access to a student's LPAC documentation.

C. Placement

1. It is the responsibility of the LPAC to properly place ELLs once they have been identified as a student with English Language Learners.
2. In addition to WMLS-R test results, the LPAC reviews an ELL's academic history, TELPAS, standardized test results, special needs, and previous instructional programs, when determining instructional placement.
3. The LPAC will recommend appropriate instruction for mastery of the Texas Essential Knowledge and Skills (TEKS) of required subjects. A sequential program of bilingual education or ESL instruction as required by TEA guidelines for language usage in bilingual education and ESL classrooms will be implemented.
4. Parental approval is required for a student's participation in the required bilingual/ESL classes until the student meets the exit criteria or the parent requests a change in program placement. Parents must be notified in writing when students are exited from the program. If a parent denies permission to enroll a student in the state-required bilingual/ESL classes as recommended by the LPAC, a parental plan of action for denials/benefits meeting documentation must be completed which includes a conference with the LPAC administrator, the parent, and another member of the LPAC to ensure that the parent understands the purpose and content of the recommended bilingual/ESL program. If the parent continues to deny permission, the denial must be stated explicitly in a handwritten letter and the original letter retained in the student's cumulative record. Neither [REDACTED] ISD nor the Provider may solicit parent denial or provide a denial form for parent signature.
5. The LPAC is responsible for reclassifying ELLs, as appropriate, according to state guidelines and [REDACTED] ISD policy. The exiting process occurs at the end of the academic year after no earlier than six years or later than seven years after the student enrolls.

D. Instructional Programs

1. [REDACTED] ISD staff and the Provider staff will coordinate and collaborate with each other regarding the provision of bilingual and/or ESL instruction to a student in the Provider's Pre-Kindergarten program.
2. Provider agrees that all instruction provided to [REDACTED] ISD students will comply with the applicable statutory requirements of Title III of the No Child Left Behind Act, Chapter 29 of the Texas Education Code, Chapter 89 of Texas Administrative Code and applicable provisions of [REDACTED] ISD local policy regarding educating English Language Learners.
3. If applicable, the Provider agrees to provide elementary dual language education as the bilingual education model.
4. If [REDACTED] ISD identifies the Provider's classroom as a bilingual education classroom, then the Provider shall ensure instruction is offered in the primary language of students identified as English Language Learners (ELL) whose primary language is Spanish.



5. The Provider shall ensure English as a second language program (ESL) instruction is provided for all English Language Learners (ELL) whose primary language is other than Spanish.

E. Monitoring/Review

1. [REDACTED] ISD LPAC will be responsible for monitoring and reviewing the academic progress of all students classified as ELL.
2. [REDACTED] ISD will monitor and annually assess the Provider's proper implementation of any required bilingual or ESL instruction using the [REDACTED] ISD evaluation tools.

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EXHIBIT B

SCHEDULE AND TIMELINE OF SERVICES PROVIDED

**[specify specific time deadlines for each phase of the work, if appropriate, and for the work as a whole]**

**[Provide detailed milestones and schedules of when deliverables are to be submitted and reviewed.]**

**[Include any other details relating to when services are performed]**

**[Or reference in Assignment of work]**

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EXHIBIT C

PAYMENT FOR SERVICES

Fee: Not to Exceed [XXXXXXXX]

Daily or Hourly Rate: [xxx per hour (Invoices to be submitted on a monthly basis or at completion of project)]

Maximum Days or Hours Required: [XXXX]

Compensation:

\$ [redacted] ( [redacted] ),  
(Complete Numbers And Words)

Travel Expenses:

\$ [redacted] ( [redacted] ),  
(Complete Numbers And Words)

Agreement Sum: (Compensation + Travel Expenses)

\$ [redacted] ( [redacted] ),  
(Complete Numbers And Words)

Reimbursables; Not In Agreement Sum, approved in advance in writing by Owner. Not-To-Exceed:

\$ [redacted] ( [redacted] ),  
(Complete Numbers And Words)

Travel Expenses:

Travel expenses that are reimbursable, if negotiated as part of the Agreement, are limited to those types, rates, and amounts permitted for District employees per [Board Policy DEE\(R\) - Regulation](#) or its successor policy, which will be provided upon request. Reimbursable travel is subject to approval and verification by the District. All Travel Expenses shall be itemized and invoiced separately to the District with supporting paperwork and receipts. Excess or non-eligible travel costs are not reimbursable and will be incurred by the Vendor as an overhead expense from any daily or hourly rate. Any and all travel expenses paid to the Vendor shall be included in the total payment to Vendor, unless otherwise specified.

To receive payment, Vendor shall send invoices to District, specifying the days, hours and nature of the tasks covered by the invoices, such invoices are not to exceed in the aggregate the Maximum Sum.

The Vendor shall be paid in installments during the term of the Agreement, in accordance with the Early Learning Department's schedule. All invoices must show actual days or hours worked, per the terms herein. The Maximum Sum represents the maximum "not to exceed" cost to the District as shown above. Non-worked days or hours shall not be invoiced.

The District shall pay all undisputed invoices within thirty (30) days of receipt. The District's preferred method of payment will be thru Electronic Funds Transfer (EFT) or E-payables.

EXHIBIT D

INSURANCE REQUIREMENTS

Vendor shall comply with the following insurance requirements:

Contract/Agreement insurance requirement:	
Workers' Compensation	Statutory Limits
Employer's Liability	\$300,000 per accident/\$300,000 per person \$300,000 policy limit
General Liability	
Bodily Injury & Property Damage	\$300,000 per occurrence \$300,000 aggregate
Automobile Liability	
Bodily Injury & Property Damage	\$250,000 per person/\$300,000 per accident \$250,000
Professional Liability	\$300,000 per claim
Umbrella Policy	\$300,000 per occurrence/ \$300,000 aggregate

All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specification, and shall be maintained in compliance with these general specifications throughout the duration of the Contract/Agreement, or longer, if so noted:

Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A minus, IV or better

- General Liability and auto liability policies shall be endorsed to provide the following:
  1. Name as additional insured the District, its Officials, Agents, and Employees.
  2. Waiver of Subrogation in favor of [REDACTED] Independent School District
  3. That such insurance is primary and non-contributory to any other insurance available to the additional insured.
- Worker's Compensation policy shall be endorsed to provide the following:
  4. Waiver of Subrogation in favor of [REDACTED] Independent School District  
Coverage must apply to workers compensation laws of the State of Texas

All policies shall be endorsed to provide thirty (30) days prior written notice or cancellation, non-renewal or reduction in coverage except ten days for nonpayment of premium

5. Should any of the required insurance be provided under a claims-made form, the contractor will maintain such coverage continuously throughout the term of this contract / agreement and without lapse, for a period of three years beyond the contract / agreement expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract/agreement will be covered.
6. The certificate holder address on all certificates of insurance should read as follows or as otherwise directed by Risk Management:  
[REDACTED] Independent School District

Risk Management Services

██████████  
██████████ Texas ██████████

Insurance requirements for contracts/agreements are based on the following guidelines: □  
Contracts/agreements under \$50,000 do not require proof of insurance, unless the services are within the categories listed below. All contracts/agreements over \$150,000 require proof of insurance.

DRAFT

REQUIRED RISK MANAGEMENT REVIEW DOCUMENT

Review of Insurance Requirements for Agreements

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

Vendor: \_\_\_\_\_

Buyer: \_\_\_\_\_ Fax #: \_\_\_\_\_

Agreement Amount: \_\_\_\_\_

Description of Service to be Provided: \_\_\_\_\_

General Liability Coverage - Approved  Disapproved

Automobile Coverage - Approved  Disapproved

Worker's Compensation - Approved  Disapproved

Professional Error's & Omissions - Approved  Disapproved

Umbrella Policy - Approved  Disapproved

Payment/Performance Bond- Approved  Disapproved

Reason(s) for disapproval: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Completed by: \_\_\_\_\_

RISK MANAGEMENT DEPARTMENT

Phone [REDACTED] Fax [REDACTED] [REDACTED]@ [REDACTED].org

***(Include signed form in agreement w/ insurance certificate)***

EXHIBIT E  
M/WBE PLAN

**[Attach final signed forms after the review page]**

**[Initial forms submitted with procurement may be utilized]**

**EXHIBIT F**

**CONFLICT OF INTEREST QUESTIONNAIRE**

**[Attach final signed form]**



**EXHIBIT G**

**ASSIGNMENT OF WORK**

1. This Assignment of Work to amend the Agreement between

**[legal name w/ dba name of firm]**

("Vendor") and the [redacted] Independent School District ("District" or "Owner") is effective as of

**[Enter Current Date]**

2. The Vendor and the Owner agree to amend that certain professional service Agreement dated

**[Enter the Effective Date from the master Agreement]**

("the "Agreement") as follows:

3. The Project(s):

**[Any suitable description, incorporating Exhibits A Personnel, B Schedule, C Payment may be substituted]**

**[School Name A; Road 1, [redacted] TX]**


**[School Name B; Road 2, [redacted] TX]**


**[School Name C; Road 3, [redacted] TX]**


**[School Name D; Road 4, [redacted] TX]**


**Total Basic Services Fee for this assignment of work =**

**[fill in total cost \$ ( spell out in words total dollars )]**

4. All other provisions of the Agreement shall remain in full force and effect. Terms as used herein are as defined in the Agreement. The attached Schedule for Performance of Services is agreed to be an essential part of this Assignment of work to the Agreement.

Neither the execution of this Agreement by the District nor any other conduct of any representative of the District relating to the Agreement shall be considered a waiver of governmental immunities available to the District.

FOR THE VENDOR

By:

*(VENDOR REPRESENTATIVE SIGNATURE)*

Dated: \_\_\_\_\_

FOR THE DISTRICT

By:

*AUTHORIZED REPRESENTATIVE*

Approved as to Form:

By:

*(SCHOOL ATTORNEY)*

END OF FORM OF AGREEMENT