

APPENDIX B
STANDARD AGREEMENT

RECITALS

WHEREAS, the District is authorized to contract for the procurement of goods and services as authorized by law; and

WHEREAS, the Contractor is specially trained, experienced and competent to perform services pursuant to this agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereby agree as follows:

AGREEMENT

1. **CONTRACT DOCUMENTS.** The complete contract between the Contractor and the District includes the following documents as applicable: the advertisement of bids, the bid conditions, specifications and general contract conditions, the bid of the Contractor and its acceptance by the District, the contract, and all amendments thereto. Any of these documents shall be interpreted to include all provisions of the other documents as though fully set forth therein.

2. **SERVICES.** The Contractor shall provide the following:

The Contractor shall perform the maintenance services set forth in Exhibit __ (the "Services").

3. **TERM OF AGREEMENT.** The period of this agreement shall be from _____, to _____, , and may be renewed for a maximum of two additional one-year periods, at the District's option , subject to cancellation by the District upon 30 days' prior written notice.

4. **WARRANTIES.** The Contractor warrants that the Services (and any goods in connection therewith) furnished hereunder will conform to the requirements of this agreement (including all descriptions, specifications and drawings made a part hereof) and, in the case of goods, will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the District, free from defects in design. The District's approval of designs or specifications furnished by the Contractor shall not relieve the Contractor of its obligations under this warranty. All warranties, including special warranties specified elsewhere herein, shall inure to the District, its successors, assigns, and users of the Services.

5. **FEES.** Invoicing shall not occur until the system is installed and accepted by the District. The District shall pay the Contractor the fees set forth in Exhibit __, in accordance with the terms and conditions of this agreement. The Contractor represents that such fees do not exceed the Contractor's customary current price schedule.

The District shall pay all applicable taxes; excepting, however, the federal excise tax, and all state and local property taxes, as college districts are exempt therefrom.

Payment by the District of any invoice shall constitute full and final payment for service rendered for the period covered by such invoice, unless the Contractor files a claim for error or omission within ninety (90) days of the date of invoice.

6. **EXPENSES.** The Contractor shall assume all expenses incurred in connection with performance except as otherwise provided in this agreement.

7. **TERMINATION OF AGREEMENT.** This agreement may be terminated by the District by providing 30 days' prior written notice to the Contractor, or immediately upon breach of this agreement by the Contractor.

8. **RELATIONSHIP OF PARTIES.** With regard to performance hereunder, the Contractor is an independent contractor and not an officer, agent, partner, joint venturer, or employee of the District. The Contractor shall not, at any time, or in any manner represent that it or any of its agents or employees are in any manner agents or employees of the District.

9. **WAIVER OF DAMAGES; INDEMNITY.** The Contractor hereby waives and releases the District from any claims the Contractor may have at any time arising out of or relating in any way to this agreement, except to the extent caused by the District's willful misconduct. Notwithstanding the foregoing, the parties agree that in no event shall the District be liable for any loss of the Contractor's business, revenues or profits, or special, consequential, incidental, indirect or punitive damages of any nature, even if the District has been advised in advance of the possibility of such damages. This shall constitute the District's sole liability to the Contractor and the Contractor's exclusive remedies against the District. Except for the sole negligence or willful misconduct of the District the Contractor shall indemnify, hold harmless and defend the District and its Board of Trustees, officers, employees, and agents from any liability, losses, costs, damages, claims, and obligations relating to or arising from this agreement.

Without limiting the foregoing, the Contractor shall indemnify and hold harmless the District, and its Board of Trustees, officers, employees, and agents from all liability, losses, costs, damages, claims, and obligations of any nature or kind, including attorneys fees, costs, and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance, registered or unregistered trademark, servicemark, or tradename, furnished or used in connection with this agreement. The Contractor, at its own expense, shall defend any action brought against the District to the extent that such action is based upon a claim that the goods or software supplied by the Contractor or the operation of such goods infringes a patent, trademark, or copyright or violates a trade secret.

10. **INSPECTIONS.** The District reserves the right to hold periodic inspections of any or all equipment covered by the contract. The Contractor shall be notified in advance of the inspection and shall arrange to have its representative present at the inspection.

11. **PERMITS AND LICENSES.** The Contractor and its employees and agents shall secure and maintain in force such licenses and permits as required by law in connection with the performance of this contract.

12. **SUBCONTRACTORS.** The Contractor must set forth the name and location of the place of business of every subcontractor who will provide labor or service in any way connected with the work in this contract. The Contractor must set forth the portion of work which will be done by each subcontractor. The Contractor shall list only one subcontractor for each such portion. The Contractor must not sublet or subcontract any part of the work called for in this contract without the written consent of the District.

The Contractor shall provide the District a list of its subcontractors and the Contractor shall be solely responsible for any and all work done by those subcontractors. All orders or instructions from the District shall be communicated by the Contractor to its subcontractors as is necessary. It shall be the duty of the Contractor to see that all of its subcontractors commence work promptly at the proper time, and carry it on with due diligence so that they do not delay or injure either work or products, and that all damage caused by the subcontractors or their workers is properly made good by them or by the Contractor at the Contractor's cost.

13. **CODES, ORDINANCES AND STATUTES.** The Contractor must complete all work specified herein in complete accordance with the requirements of these specifications and with all applicable codes, ordinances and statutes of the State of California, the County of Los Angeles and the City of Los Angeles. In case of conflict among these requirements, the most restrictive will apply.

14. **COMPLIANCE WITH LEGAL REQUIREMENTS.** The Contractor shall at all times comply with all ordinances, laws, and regulations affecting supplies and services provided under this agreement. All permits, licenses, variances or approvals which may be necessary for the Contractor to fulfill its obligations under this agreement shall be obtained by the Contractor at its sole cost and expense.

15. **INSURANCE.** Without limiting the Contractor's indemnification of the District and as a material condition of this agreement, the Contractor shall procure and maintain at its sole expense, for the duration of this agreement, insurance coverage with limits, terms and conditions at least as broad as set forth in this section. The Contractor shall secure and maintain, at a minimum, insurance as set forth below, with insurance companies acceptable to the District to protect the District from claims which may arise from operations under this agreement, whether such operations be by the Contractor or any subcontractor or anyone directly or indirectly employed by any of them. As a material condition of this agreement, the Contractor shall furnish to the District certificates of such insurance and endorsements, which shall include a provision for a minimum thirty-days notice to the District prior to cancellation of or a material change in coverage.

The Contractor shall provide the following insurance:

a) Commercial General Liability Insurance, "occurrence" form only, to provide defense and indemnity coverage to the Contractor and the District for bodily injury and property damage. Such insurance shall name the District as an additional named insured and shall have a combined single limit of not less than one million dollars (\$1,000,000) per occurrence. The policy so secured and maintained shall include personal injury, contractual or assumed liability insurance; independent contractors; premises and operations; products liability and completed operation; broad form property damage; broad form liability; and owned, hired and non-owned automobile insurance. The policy shall be endorsed to provide specifically that any insurance carried by the District which may be applicable to any claim or loss shall be deemed excess and non-contributory, and the Contractor's insurance primary, despite any provisions in the Contractor's policy to the contrary.

b) Workers' Compensation Insurance with limits as required by the Labor Code of the State of California and Employers Liability insurance limits of not less than one million dollars (\$1,000,000) per accident.

Failure to maintain the insurance and furnish the required documents may terminate this agreement without waiver of any other remedy the District may have under law.

16. **DEFAULT BY CONTRACTOR.** The District shall hold the Contractor responsible for any damages which may be sustained because of the failure or neglect of the Contractor to comply with any term or condition listed herein, it being specifically provided and agreed that time is of the essence in the contract performance.

If the Contractor fails or neglects to furnish any of the equipment, supplies or services listed herein at the price name and at the time and places herein stated or otherwise fails or neglects to comply with the terms of the contract, the District may, upon written notice to the Contractor, cancel the contract in its entirety or cancel or rescind any or all items affected by such default; and may, whether or not the contract is cancelled in whole or in part, procure services elsewhere without notice to the Contractor.

17. **AMENDMENTS.** This agreement is the entire agreement between the parties as to its subject matter and supersedes all prior or contemporaneous understandings, negotiations, or agreements between the parties, whether written or oral, with respect thereto. This agreement may be amended only in a writing signed by both parties.

18. **RENEWAL OF AGREEMENT.** The initial term of this agreement shall remain in force for a period of three (3) years, unless terminated as herein provided, and may be annually renewed thereafter in writing, upon the option of the District, for an additional two (2) years beyond the initial period of this agreement, not to exceed a total of five (5) years, including the initial term.

19. **ASSIGNMENT.** This agreement may not be assigned or otherwise transferred, in whole or in part, by either the District or the Contractor without prior written consent of the other.

20. **GOVERNING LAW.** This agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder, and any action arising from or relating to this agreement, shall be construed and enforced in accordance with, and governed by, the laws of the State of California or United States law, without giving effect to conflict of laws principles. Any action or proceeding arising out of or relating to this agreement shall be brought in the county of Los Angeles, State of California, and each party hereto irrevocably consents to such jurisdiction and venue, and waives any claim of inconvenient forum.

21. **NONDISCRIMINATION.** The Contractor hereby certifies that in performing work or providing services for the District, there shall be no discrimination in its hiring, employment practices, or operation because of sex, race, religious creed, color, ancestry, national origin, physical disability, mental disability, medical condition, marital status, or sexual orientation, except as provided for in section 12940 of the Government Code. The Contractor shall comply with applicable federal and California anti-discrimination laws, including but not limited to, the California Fair Employment and Housing Act, beginning with Section 12900 of the California Government Code, the provisions of the Civil Rights Act of 1964 (Pub. L. 88-352; 78 Stat. 252) and Title IX of the Education Amendments of 1972 (Pub. L. 92-318) and the Regulations of the Department of Education which implement those Acts. The Contractor agrees to require compliance with this nondiscrimination policy by all subcontractors employed in connection with this agreement.

22. **NON-WAIVER.** A waiver of a breach or default under this agreement shall not be deemed a waiver of any subsequent breach or default. Failure of either party to enforce compliance with any term or condition of this agreement shall not constitute a waiver of such term or condition.

23. **SUCCESSORS.** The agreement shall be binding upon, and shall inure to the benefit of, the parties hereof and their respective permitted transferees, successors and assigns.

24. **EQUAL OPPORTUNITY EMPLOYER.** The Contractor, in the execution of this agreement, certifies that it is an equal employment opportunity employer.

25. **ATTORNEYS' FEES AND COSTS.** If either party shall bring any action or proceeding against the other party arising from or relating to this agreement, each party shall bear its own attorneys' fees and costs, regardless of which party prevails.

26. **BOARD AUTHORIZATION.** The effectiveness of this agreement is expressly conditioned upon approval by the District's Board of Trustees.

27. **SEVERABILITY.** The Contractor and the District agree that if any part, term, or provision of this agreement is found to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect other parts, terms, or provisions of this agreement, which shall be given effect without the portion held invalid, illegal, or unenforceable, and to that extent the parts, terms, and provisions of this agreement are severable.

28. **TERMINATION FOR NON-APPROPRIATION OF FUNDS.** If the term of this agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the agreement is contingent on the appropriation and availability of funds for such purpose, as determined in good faith by the District. If funds to effect such continued purpose are not appropriated or available as determined in good faith by the District, this agreement shall automatically terminate and the District shall be relieved of any further obligation.

29. **NOTICE.** Any notice required to be given pursuant to the terms of this agreement shall be in writing and served personally or by deposit in the United States mail, postage and fees fully prepaid, addressed to the applicable address set forth above. Service of any such notice if given personally shall be deemed complete upon delivery, and if made by mail shall be deemed complete on the day of actual receipt or at the expiration of 2 business days after the date of mailing, whichever is earlier.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in Los Angeles, California, on the date set forth above.

-DISTRICT-
LOS ANGELES COMMUNITY COLLEGE DISTRICT
By BOARD OF TRUSTEES OF THE
LOS ANGELES COMMUNITY COLLEGE DISTRICT

By _____

Printed Name _____

Title _____

- CONTRACTOR -

By _____
(Signature)

Printed Name _____

Title _____