

**SAN RAFAEL CITY SCHOOLS**

**INDEPENDENT CONTRACTOR AGREEMENT FOR PROFESSIONAL SERVICES**

**CLOUD HOSTING AND DATA DISTRIBUTION SERVICES**

This Independent Contractor Agreement for Special Services ("Agreement") is made as of the 11th day of January in the year 2016, between the San Rafael Elementary School District and San Rafael High School District (collectively "San Rafael City Schools" or "District") and School Loop, Inc. ("Contractor") (District and Contractor are collectively referred to herein as the "Parties").

**WHEREAS**, the District is authorized by Section 53060 of the California Government Code to contract with and employ persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required;

**WHEREAS**, the District is in need of such services and advice and the Contractor warrants that it is specially trained, licensed and experienced and competent to perform the services required by the District;

**WHEREAS**, the Contractor agrees to perform the Services described in this Agreement in accordance with the standards of its profession, to District's satisfaction, and in accordance with this Agreement.

**NOW, THEREFORE**, the Parties agree as follows:

**1. Services.** Contractor shall furnish to the District the following services:

On-line subscription services designed to facilitate the distribution of information regarding students to parents, students, school and district staff, and, with the proper approvals, to appropriate people with student information rights, and provide communications and information-sharing capabilities between teachers, students, school and district staff, people with student information rights, and parents, as further described in Exhibit "A," attached hereto and incorporated herein by this reference

("Services" or "Work"). On January 1, 2016, the District will determine and notify Contractor of quantity of Services to be provided, in accordance with Exhibit "A" ("Service Level"), and Contractor shall provide Services at the Service Level.

**2. Term.** Contractor shall commence providing services under this Agreement on July 1, 2015, and will diligently perform as required or requested by District as applicable. The term for these services shall expire on June 30, 2016. This Agreement may be extended upon mutual approval of both parties on an annual basis to the extent permissible under applicable law.

**3. Submittal of Documents.** The Contractor shall not commence the Work under this Contract until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u>  X  </u> Signed Agreement	<u>  X  </u> Workers' Compensation Certificate
<u>  X  </u> Insurance Certificates & Endorsements	<u>      </u> W-9 Form
<u>      </u> Bonds (as requested by District)	<u>      </u> Other: _____

4. **Compensation.** District agrees to pay the Contractor for Services satisfactorily rendered pursuant to this Agreement a total fee not to exceed the amount determined by District pursuant to Exhibit "A" ("Compensation"). District shall pay Contractor in full within thirty (30) days after the Contractor submits an invoice to the District.
5. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing the Work.
6. **Materials.** Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
7. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees.
8. **Standard of Care.** Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California school districts.
9. **Originality of Services.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services.
10. **Copyright/Trademark/Patent.** Contractor understands and agrees that any data, information or other content of any type which is provided by District, or any user of the Services authorized by District, to Contractor, or any derivative thereof, is and shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. District hereby grants Contractor, to the extent permitted by law, a revocable non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of and publicly display the District Content solely to the extent necessary to provide the Service.
11. **Termination.**
  - 11.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three days after the day of mailing, whichever is sooner.
  - 11.2. **Without Cause by Contractor.** Contractor may, upon sixty (60) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Contractor for services satisfactorily rendered to the date of termination. Written notice by Contractor shall be sufficient to stop further performance of services to District. Contractor acknowledges that this sixty (60) day notice period is acceptable so that the District can attempt to procure the Services

from another source.

11.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

11.3.1. material violation of this Agreement by the Contractor; or

11.3.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or

11.3.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Contractor. If the expense, fees, and/or costs to the District exceeds the cost of providing the service pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs up to a maximum amount of one hundred fifteen percent (115%) of the remaining, paid Compensation assuming (1) the amount paid to another Contractor is typical of amounts paid by California school districts and (2) it is for services that are equivalent to Contractor's Services. By way of example, if Contractor's total Compensation for the software license is \$10,000 for the year, and the District has paid \$10,000, and 6 months have passed, then in the case of Cancellation With Cause by District, School Loop will refund up to 115% of \$5,000. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

11.4. Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.

12. **Indemnification.** To the furthest extent permitted by California law, Contractor shall, at its sole expense, defend, indemnify, and hold harmless the District, and its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, financial damages, personal injury, death, property damage, and consultants' and/or attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Agreement, except to the extent caused by the negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

13. **Insurance.**

13.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

13.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001)

13.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under

this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

13.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
<b>Automobile Liability Insurance - Any Auto</b>	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
<b>Professional Liability</b>	\$ 1,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

13.2. **Proof of Carriage of Insurance.** The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

13.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

13.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

13.2.3. An endorsement stating that the District and the State and their representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.

13.2.4. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

13.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

14. **Assignment.** The rights and obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor, except that Contractor may assign the rights and obligations of the Contractor pursuant to this Agreement to any entity acquiring all or substantially all of the assets of the Contractor ("Successor") with the District's consent, which shall not be unreasonably withheld, provided that Contractor shall give the District at least 60 days prior written notice of the assignment.

15. **Compliance with Laws.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such

laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

16. **Permits/Licenses.** Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.
17. **Safety and Security:** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
18. **Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
19. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).
20. **Fingerprinting of Employees.** The District has determined that, pursuant to Education Code section 45125.2, that on the basis of the scope of Services in this Agreement that Contractor and its employees will have only limited or no contact with pupils. The District reserves the right to change that determination, at which time it will notify the Contractor that the Contractor shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees; that the Contractor shall not permit any employee to have any contact with District pupils until such time as the Contractor has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1; and that the Contractor's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor.
21. **Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.

22. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors.** The District may evaluate the Contractor in any manner which is permissible under the law. The District's evaluation may include, without limitation:
- 22.1. Requesting that District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.
  - 22.2. Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).
23. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
24. **Disputes:** In the event of a dispute between the parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop Work.
25. **Confidentiality.** The District, in its sole and absolute discretion, may choose to provide Contractor and Contractor's agents and employees ("Personnel") with access to records that are protected from disclosure by various laws ("Confidential Information"), or may have previously chosen to do so, provided that access may lawfully be given under applicable law. For example, the District, in its sole and absolute discretion, may choose to provide Contractor with access to records that are protected from disclosure by FERPA if Contractor has a legitimate educational interest pursuant to 34 C.F.R. § 99.31 (a)(1)(i)(A). In the event that the District, in its sole and absolute discretion, permits Contractor access to Confidential Information, Contractor and its Personnel shall hold the Confidential Information in trust for the District's benefit, and shall, in addition to any other obligation imposed by this Agreement or law, utilize the utmost care at all times to adopt and follow practices and procedures to prevent the unauthorized disclosure of Confidential Information.
26. **Nondisclosure.** Should District, in its sole and absolute discretion, choose to permit Contractor and its Personnel access to Confidential Information, or has already done so, Contractor acknowledges and agrees that Contractor and its Personnel shall use the Confidential Information solely in connection with performance by Contractor of the services provided to the District, and shall not use the Confidential Information for any other purpose without the prior written consent of the District. Contractor acknowledges and agrees that Contractor will not disclose Confidential Information to any other person or entity without the prior consent of the parent or eligible student, except that Contractor's Personnel may use the Confidential Information, but only for the purposes for which the disclosure was made. In no event shall Contractor or its Personnel disclose or permit the disclosure of Confidential Information or any files, compilation, study, report, analysis, or any other work derived from or influenced by the Confidential Information ("Derivative Product") to any person that is not a Party to this Agreement without the prior written consent of District. Contractor shall not distribute, disclose, or disseminate any Confidential Information to any person, except that Contractor may disclose Confidential Information to its Personnel if necessary to perform the Personnel's function. Disclosure to Contractor's Personnel shall be limited to Confidential Information that is necessary to perform Personnel's services and related to the legitimate educational interest for which the Confidential Information was disclosed.
27. **Subpoenas and Judicial Orders.** Notwithstanding any other term of this Agreement, Contractor may disclose Confidential Information received from District when required to do so by law, judicial body or government agency, provided that it complies with applicable law. However if Contractor or its Personnel are served with

any subpoena, court order, or other legal process seeking disclosure of Confidential Information, Contractor shall provide District notice of the subpoena, court order, or other legal process within forty-eight (48) hours of receipt or upon a shorter time frame as necessary so that District may exercise any applicable legal rights and remedies. In no event shall Contractor or its Personnel voluntarily disclose Confidential Information without a subpoena, court order, or other legal process unless and until Contractor has given all required notices to the District, parent and/or eligible student. Contractor agrees and acknowledges that a violation of this paragraph by Contractor shall be a material breach of this Agreement.

28. **Breach.** If Confidential Information in the possession of Contractor is accessed without authorization, or if a system maintained by Contractor containing Confidential Information is breached, Contractor shall notify the District in writing without delay. Contractor shall be solely responsible for compliance with any legally required notifications resulting from the breach, including notifications to affected persons, and Contractor shall reimburse the District for the reasonable cost of any notification the District, in its sole discretion, deems appropriate, regardless of whether such notification is mandated by law.

## 29. Data

29.1. **Return and Destruction of Materials.** Contractor shall immediately return student records, Confidential Information and Derivative Product upon District's request. In addition, Contractor shall immediately return or destroy, as instructed by the District, the student records, Confidential Information and Derivative Product upon the termination of this Agreement, the termination of all agreements for which the disclosure of any Confidential Information to Contractor is authorized, or when any Confidential Information is no longer needed for the purpose for which it was obtained, whichever is earlier. Nothing in this Agreement authorizes Contractor to maintain Confidential Information or Derivative Product beyond the time period reasonably needed to complete performance of the services provided to the District.

29.2. **Disclosure to Third Parties.** Pursuant to 34 C.F.R. § 99.67 of the FERPA Regulations, if the Department of Education finds that a Contractor improperly discloses personally identifiable information from education records in violation of § 99.33 of the FERPA Regulations or fails to provide the notification required under § 99.33 (b)(2) of the FERPA Regulations, then Contractor shall be prohibited from accessing any personally identifiable information from education records for at least five (5) years.

29.3. **Contractor Employees.** Contractor shall require all of Contractor's Personnel to comply with the terms of this Agreement, with all applicable law relating to the subject matter of this Agreement, and with all lawful instructions given to Contractor by the District relating to the subject matter of this Agreement.

29.4. **Further Assurances and Instructions.** The Parties shall execute further documents and do any and all further things as may be necessary to implement and carry out the intent of this Agreement, and necessary to comply with applicable law. Contractor acknowledges that, to the extent it receives education records, it must be under the direct control of the District with respect to the use and maintenance of education records. Accordingly, Contractor shall comply with all lawful instructions from the District relating the use and maintenance of education records.

29.5. **Digital Services and Software.** The Parties agree that this Agreement qualifies as a contract (1) to provide services, including cloud-based services, for the digital storage, management, and retrieval of pupil records, or (2) to provide digital educational software that authorizes a third-party provider of digital educational software to access, store, and use pupil records for the purposes of Education Code section 49073.1, and therefore the Parties further agree as follows:

29.5.1. ***Ownership.*** All pupil records/education records are Confidential Records, and to the extent that Confidential Records are disclosed by the District to Contractor, those Confidential Records shall remain the property of and subject to the control of the District. To the extent that Contractor possesses Confidential Information, it shall hold the Confidential Information in trust for the benefit

of the District and shall comply with all lawful instructions from the District regarding the Confidential Information.

- 29.5.2. *Pupil Access.* Notwithstanding the foregoing, pupils may retain possession and control of their own pupil-generated content, if applicable, by submitting a request to Contractor or the District. Upon receipt of pupil's request, the recipient Party shall promptly notify the other Party of the request, and the Parties shall work cooperatively to effectuate the pupil's request. Contractor shall comply with all lawful instructions from the District relating to the request, including without limitation the effectuation of the request.
- 29.5.3. *Contractor Personal Use Prohibited.* Contractor and its Personnel shall not use any Confidential Information for any purpose other than those required or specifically permitted by this Agreement.
- 29.5.4. *Correction of Information.* A parent, legal guardian, or eligible pupil may review personally identifiable information in the pupil's records and correct erroneous information by submitting a request to Contractor or the District. Upon receipt of the request, the recipient Party shall promptly notify the other Party of the request, and the Parties shall work cooperatively to effectuate the pupil's request. Contractor shall comply with all lawful instructions from the District relating to the request, including without limitation the effectuation of the request.
- 29.5.5. *Ensuring Confidentiality.* Without limiting or narrowing any obligation to preserve confidentiality found elsewhere in this Agreement or applicable law, Contractor shall, at a minimum, take the following actions to ensure the security and confidentiality of Confidential Information: (1) Contractor shall regularly train its Personnel regarding their security and confidentiality obligations; (2) Contractor shall obligate its Personnel to effectuate and abide by the terms of this Agreement; (3) Contractor shall comply with industry standards regarding information security; and (4) Contractor shall only permit trained and qualified personnel access to Confidential Information.
- 29.5.6. *Unauthorized Disclosure Notification.* In the event of an unauthorized disclosure of Confidential Information, the Contractor shall notify the District of the breach. Thereafter, District shall notify the affected parent, legal guardian, or eligible pupil in conformance with applicable law and this Agreement.
- 29.5.7. *Non-Retention Certification.* Contractor certifies that, in accordance with this Agreement, Confidential Information shall not be retained or available to Contractor or Contractor's Personnel upon the completion of the Contractor's services for which the disclosure was authorized. This certification may be enforced by any lawful means, including, without limitation, through civil or administrative action. This paragraph shall not apply to pupil-generated content if the pupil chooses to establish or maintain an account with the Contractor for the purpose of storing that content. Contractor shall certify the continuing accuracy of this certification prior to accepting final payment, and shall not be entitled to final payment unless it attests in writing to the following: "no student records, Confidential Information, or Derivative Product, as defined in the Agreement between Contractor and District have been retained by Contractor, and all student records, Confidential Information, or Derivative Product have been returned to the District".
- 29.5.8. *Joint-Compliance.* The Parties shall work cooperative to jointly ensure compliance with FERPA. Contractor shall comply with all lawful instructions from the District relating to compliance with FERPA and the FERPA Regulations. Compliance includes permitting District, upon District's request, to inspect the Confidential Information and Derivative Product.
- 29.5.9. *Targeted Advertising.* Contractor shall not use personally identifiable information in Confidential Information and Derivative Product to engage in targeted advertising.

30. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service, addressed as follows:

District

Contractor

San Rafael City Schools  
310 Nova Albion Way  
San Rafael, CA 94903  
ATTN: Chief Business Officer

School Loop, Inc.  
41 Grant Ave, Suite 200  
San Francisco, CA 94108  
Attn: Mark Gross

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

- 31. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 32. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the California county in which the District's administration offices are located.
- 33. **Injunctive Relief.** Contractor acknowledges and agrees that any breach or threatened breach by Contractor or its Personnel of this Agreement will cause serious and irreparable harm to the District that cannot be adequately compensated by monetary damages and that the District may seek injunctive relief from an appropriate court to protect the District from harm without necessity of bond or other security.
- 34. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 35. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 36. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto, including the Supplemental Terms and Conditions attached hereto as Exhibit "B", are hereby incorporated herein by reference. To the extent there is any inconsistency between Exhibit "B" to the Agreement and any other portion of this Agreement, the portion of this Agreement not Exhibit "B" shall control.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

**San Rafael City Schools**

**School Loop, Inc.**

Date: \_\_\_\_\_, 20\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

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

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

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Information regarding Contractor:

Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Type of Business Entity:  
\_\_\_\_ Individual      \_\_\_\_ Sole Proprietorship  
\_\_\_\_ Partnership    \_\_\_\_ Limited Partnership  
\_\_\_\_ Limited Liability Company  
\_\_\_\_ Corporation  
\_\_\_\_ Other: \_\_\_\_\_

State of Business Entity Organization:  
\_\_\_\_\_

\_\_\_\_\_  
Employer Identification and/or Social Security Number

**NOTE: Federal Code of Regulations sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.**

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**WORKERS' COMPENSATION CERTIFICATION**

Labor Code Section 3700 in relevant part provides that every employer except the State shall secure the payment of compensation in one or more of the following ways:

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

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

Date: \_\_\_\_\_  
Proper Name of Contractor: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Contract.)

Exhibit "A"  
Scope of Services

Contractor shall provide the following services to District:

1. Websites: Quantity of fourteen (14) ("Website(s)"); and
2. Licenses: Quantity to be requested by District ("Secondary Services")

On or before January 1, 2016, the District will request whether Contractor is to provide any licenses to the District and its users.

- If the District requests that Contractor shall provide licenses to the District and its users, Contractor shall provide licenses in the amount requested by the District, for the School Loop Plus class Secondary Service, in exchange for a fee of \$5.65 per student licensed per year, and shall further provide School Loop Standard Website service at no additional charge.
- If the District requests that Contractor not provide licenses for Secondary Services to the District and its users, Contractor shall provide School Loop Standard class Website service in exchange for a fee of \$250.00 per Website per year.

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The District shall utilize the following form and provide it to Contractor to make its January 1, 2016, request.

San Rafael City Schools requests the following pursuant to its \_\_\_\_\_, 2015 Independent Contractor Agreement for Special Services with School Loop, Inc.:

Fourteen (14) Standard class Websites, at the cost of \$250 per Website per year, and no School Loop Plus class Secondary Service.

OR

\_\_\_\_\_ (\_\_\_\_\_) School Loop Plus class Secondary Service, at the cost of \$5.65 per student licensed per year, and 14 Standard class Websites at no additional charge.  
**[STATE THE NUMBER OF TOTAL LICENSES REQUESTED]**

**Exhibit "B"**  
**Supplemental Terms and Conditions**

[Reserved].

[Reserved].

**1. The Services**

1.1. [Reserved].

1.2. **Restrictions.** District may use the Services only as authorized by Contractor and for no other purpose. District shall not: (a) rent, lease, copy, provide access to or sublicense the Services to a third party, (b) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code to the Services, (c) remove or obscure any product identification, proprietary, copyright or other notices contained in the Services (including any reports or data printed from the Services); or (d) publicly disseminate information or analysis regarding the performance of the Services.

1.3. [Reserved].

**2. District Obligations**

2.1. **"District Content"** means any data, information or other content of any type which is provided by District or any User to Contractor for inclusion in the Services; including, without limitation, data, information or other content which District or users input to or upload to the Services. District shall assure that use of the Services and all District Content at all times comply with all applicable local, state, federal and international law, regulations and conventions, including, without limitation, those related to data privacy, international communications, and the exportation of technical or personal data. District is solely responsible for the accuracy, content and legality of all District Content (including its use as authorized hereunder). District represents and warrants to Contractor that District has sufficient rights in the District Content to authorize Contractor to process, distribute and display the District Content as contemplated by this Agreement and the Services, and that the District Content does not infringe the rights of any third-party or constitute libel, slander or defamation. District represents that all District Content complies with Federal and local privacy regulations and its distribution to users is not a violation of FERPA or of any local laws or education codes.

2.2. **Access to Services.** If District or users are given access to accounts on Contractor's systems in order to make use of the Services, District shall require that all users, employees and agents accessing such accounts keep user ID and password information confidential, and that each employee or agent not share such information with any unauthorized person. User IDs are granted to individual named persons and may not be shared unless required by law.

2.3. **User Consents.** District acknowledges that use of the Services may require communication with students. Contractor may provide District with a model set of statements which District may use to create user consent forms, however those statements are for District's convenience only and it is District's responsibility to ensure that these statements conform to the obligations of this Agreement and applicable law. District understands and acknowledges that if ordered by District, some features of the Services may allow certain District Content to be made public on the Internet. This publicly available District Content may include general information about a school, information regarding school news and events, information posted by teachers about their curriculum (such as course descriptions, syllabi, assignments and the like). District agrees that it shall be solely responsible for notifying users that certain District Content will be made public on the Internet and for securing the appropriate user consents. District also acknowledges that Contractor may make available functionality which allows third parties to access information on the Services or input information on the Services (by way of example and not limitation, functionality which allows synchronizing of a user's calendar to an external service).

2.4. **Third Party Services.** District acknowledges that the Services may permit District to integrate, at District's and/or users' discretion, functionality provided by third party services. Such third party services are not considered part of the "Services" provided hereunder. By enabling any such third party services, District agrees that Contractor is not responsible for the accuracy, legality, availability or reliability of any such third party

services, the acts or omissions of any providers of such third party services or any information made available in connection with such third party services. The manner in which such third party services use, store and disclose your information is governed solely by the policies of such third parties, and Contractor will have no liability or responsibility for the privacy practices or other actions of any provider of such third party service. As such, District agrees not to seek to hold Contractor liable or responsible for any damage or loss caused by or in connection with the use of such third party services. Contractor enables these features merely as a convenience and the integration or inclusion of such features does not imply an endorsement or recommendation.

### **3. Ownership**

**3.1.** [Reserved].

**3.2. Subscription not Sale.** This is a subscription agreement for use of the Services and is not an agreement for sale. District agrees that the Services and the end-user documentation and any and all related and underlying Contractor software and technology constitute trade secrets or copyrighted material of Contractor or its suppliers, and that Contractor or its suppliers retain all right, title and interest (including all intellectual property rights) therein. District may point their DNS to the sites, and they retain full rights and ownership of their own domain. Contractor may employ a subdomain of schoolloop.com in order to provide the Services, however no ownership or license right in the schoolloop.com domain, or any subdomain, is transferred under this Agreement, and Contractor reserves the sole right to manage any and all domains and subdomains related to the Services as it sees fit. All rights not specifically granted shall be reserved to Contractor. No right, title or interest in any of Contractor's trademarks is granted hereunder.

**4.** [Reserved].

### **5. Term and Termination**

**5.1.** [Reserved].

**5.2.** [Reserved].

**5.3.** [Reserved].

**5.4.** [Reserved].

**5.5. Survival.** The following Sections shall survive any expiration or termination of this Agreement: 1.2 (Restrictions), 2.4 (Third Party Services), 3 (Ownership), 4 (Fees and Payment), 5 (Term and Termination), 6.1 (Warranty Disclaimer), 8 (Confidentiality), and 9 (General).

### **6. Limited Warranty**

**6.1. Limited Warranty.** Contractor warrants, for District's benefit only, that the Services will be provided in material conformity with its documentation. Contractor does not warrant that the operation of the Services will be uninterrupted or error-free. As District's sole and exclusive remedy for any breach of warranty, Contractor will use reasonable efforts to correct any failure of the Services to conform to its documentation at no charge to District. If Contractor cannot resolve a material defect within a reasonable period of time, District will have the right to terminate the Subscription Term and receive as its sole remedy a refund of: (a) the Compensation allocable to the 30 day period prior to the date the warranty claim was made and (b) any fees District has pre-paid for periods of service it has not yet received. The limited warranty set forth in this Section 6.1 shall not apply: (a) unless District makes a claim within 30 days of the date on which the condition giving rise to the claim first appeared, (b) if the error was caused by misuse, unauthorized modifications or third-party hardware, software or services, or (c) to any free services.

**6.2. Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY IN SECTION 6.1, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND ALL TRAINING SERVICES ARE PROVIDED TO DISTRICT "AS IS" AND WITH ALL FAULTS. CONTRACTOR AND ITS SUPPLIERS DO NOT REPRESENT OR WARRANT THAT (A) THE SERVICES OR TRAINING SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, (B) ANY DISTRICT CONTENT OR OTHER STORED DATA WILL BE ACCURATE OR NON-CORRUPTED, OR (C) THAT THE SERVICES WILL BE FREE OF ANY VIRUSES OR MALICIOUS CODE WHICH CANNOT BE DETECTED USING COMMERCIALY AVAILABLE PRODUCTS. CONTRACTOR SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EITHER EXPRESS OR

IMPLIED, WITH RESPECT TO THE SERVICES AND TRAINING SERVICE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE, REGARDLESS OF ANY KNOWLEDGE OF DISTRICT'S PARTICULAR NEEDS. DISTRICT MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE LIMITED WARRANTY PERIOD. CONTRACTOR SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, THE SERVICES FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF CONTRACTOR.

7. [Reserved].

## 8. Confidentiality

**8.1. "Confidential Materials"** means (a) any Contractor software, interfaces, web applications and documentation that are designated as confidential, and (b) information designated as confidential by either Party, including, but not limited to, data, designs, drawings, documentation, software (regardless of form or media), prototypes, processes, methods, concepts, research, development and business activities, whether obtained or disclosed verbally or in writing, and (c) any pupil records, as defined under relevant education codes. The Services itself, documentation and technical information provided by Contractor or its agents shall be deemed Confidential Materials of Contractor without any marking or further designation. Contractor acknowledges that District is a public school district and that certain content is protected and governed by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA"), and the local Education Code, and Contractor agrees that it shall maintain the confidentiality of such data, and will abide by FERPA and the local Education Code.

**8.2. Nondisclosure.** The parties acknowledge that they have been entrusted with Confidential Materials of the other party and agree to use reasonable care to protect the confidentiality thereof, using at least the same degree of care that each of them would use to protect their own similar information. Except as otherwise required by applicable law, each party shall not (a) use such Confidential Materials of the other party for any purpose except as authorized under this Agreement, (b) disclose any such Confidential Materials to any person (except its employees and agents bound by obligations of confidentiality on a need-to-know basis) unless such disclosure is authorized by the other party in writing, or (c) disclose any such Confidential Materials required by court or judicial order without first attempting to inform the other party and cooperating with the other party if such party contests the disclosure thereof. Each party agrees to take all reasonable steps to ensure that Confidential Materials is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement and to notify the other party promptly and in writing upon its discovery of any unauthorized access or disclosure of any Confidential Materials.

**8.3. Exclusions.** The obligations under this Section 9 shall not apply to information which (a) is or becomes a part of public knowledge through no act or omission of the receiving party, (b) was rightfully in the receiving party's possession prior to disclosure by the disclosing party, (c) comes into the possession of the receiving party rightfully from a third party without obligation of confidentiality, (d) is independently developed by the receiving party without the use of any Confidential Materials of the disclosing party, or (e) is subject to disclosure under applicable law.

**8.4. Enforcement.** Each party understands and agrees that, notwithstanding any other provision of this Agreement, breach of Section 9 (Confidentiality) may cause the other party irreparable damage for which recovery of money damages would be inadequate, and that each party shall therefore be entitled to obtain timely injunctive relief to protect such party's rights under this Agreement in addition to any and all remedies available at law.

**8.5. Supplemental Nature of Foregoing.** Nothing in the foregoing section 9.1 through 9.4 of this Exhibit shall be construed to narrow, limit, or alter any other obligation described in this Agreement relating to confidentiality and privacy. The provisions in this Section 9 are supplemental to, but not in derogation of, the confidentiality

and privacy obligations found elsewhere in this Agreement. This paragraph shall be liberally construed to effectuate its purposes.

## **9. General**

**9.1. Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement except upon the advance written consent of the other party, except that School Loop may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of its assets or voting securities. Any attempt to transfer or assign this Agreement without such written consent will be null and void.

**9.2.** [Reserved].

**9.3.** [Reserved].

**9.4.** [Reserved].

**9.5.** [Reserved].

**9.6.** [Reserved].

**9.7. Changes to the Services.** District acknowledges that the Services is an on-line, subscription-based product, and that in order to provide improved customer experience, new features, and new products, Contractor may make changes to the Services at any time. Such changes may require District to update or upgrade software or equipment used to access the Services. District shall be solely responsible for any such updates or upgrades, provided, however, that if any planned changes to the Services are reasonably foreseeable to require any updates or upgrades to District's software or equipment, Contractor shall provide District with 6 months prior notice of such planned changes.

**9.8. Student Count Verification.** Upon contracting, and once a year for the term of the contract, District shall furnish Contractor with official student enrollment figures for the District and for each school using the Services.

**9.9. Force Majeure.** Neither Party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster or refusal of a license by a government agency.

**9.10. Publicity.** District hereby grants Contractor, to the extent permitted by law, a revocable non-exclusive, worldwide, royalty-free right to use District's name and logo as part of Contractor's customer list.

**9.11. Federal Government End Users.** If the user or licensee of the Service is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Service, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement and by the terms of this contract in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. This product was developed fully at private expense. All other use is prohibited.

**9.12. Subcontractors.** Contractor may use the services of subcontractors for performance of services under this Agreement, provided that Contractor remains responsible for (a) compliance of any such subcontractor with the terms of this Agreement and (b) for the overall performance of the Services as required under this Agreement.

**9.13.** [Reserved].

**9.14.** [Reserved].