

ENGAGEMENT AGREEMENT

THIS ENGAGEMENT AGREEMENT (“Agreement”) is entered by and between THINK CONNECTED, LLC, a California limited liability company (“Company”), and Ravenswood City School District (“Customer”), effective the 17th day of January, 2020.

RECITALS

A. Company provides various technology services, including “On-Site Services,” “Colocation Services,” and “Managed Hosting Services,” as more fully described hereinafter and in specific Addenda appurtenant to each.

B. Customer wishes to engage Company to provide the specific services as indicated in paragraph 1 of this Agreement and its or their appurtenant Addendum or Addenda.

AGREEMENT

1. Engagement.

a. Services. Company is herewith engaged by Customer to provide the services indicated by a check-mark in the applicable box or boxes and by Customer’s and Company’s execution of the applicable Addendum or Addenda:

• On-Site Services. Installation, management, and/or maintenance of Customer’s IT equipment and systems provided to Customer at Customer’s place of business or otherwise, as more fully set forth in its attached service order(s) and other attachments.

• Colocation Services. Provision, at Company’s data center, of physical space and facilities for Customer to install and operate Customer’s own IT equipment, as more fully set forth in **Addendum B** hereto and its attached service order(s) and other attachments.

• Managed Hosting Services. Provision of IT services to and for Customer by Company, utilizing Company’s own equipment and facilities, as more fully set forth in its attached service order(s) and other attachments.

b. Service Orders. Customer-specific services are set forth in one or more service orders, attached to the particular Addendum (or Addenda) utilized. Services may be added during the term of this Agreement by successive service orders, which shall be consecutively numbered and attached to the relevant Addendum. All service orders shall have an expiry date coterminous with the expiration or termination of this Agreement.

2. **Term; Holding Over; Consequences.** The term of this Agreement shall be for a period of 36 months, commencing with the effective date set forth above. At the expiration of the term, unless then extended or a new Agreement executed by the parties, in writing, any further services extended by Company to Customer shall be charged and payable at a rate equal to one hundred fifty percent (150%) of the otherwise applicable rate as stated in the applicable Addendum or Addenda and attachments. Either Party may at its sole discretion and decision terminate any or all services provided under this Agreement at any time without penalty with no less than 30 days’ Notice to the other Party.

3. **Professional Fees; Compensation; Expenses.**

a. Compensation. Rates of compensation for Company’s various services, both regular and out-of-scope (i.e., beyond the scope of the specifically included services), shall be as set forth in the applicable Addendum or Addenda and attachments. No out-of-scope work shall be undertaken without the written approval of both parties.

b. Expense Reimbursement. The compensation figures set forth in the pertinent Addendum or Addenda and attachments do not include reimbursable expense items purchased on Customer’s behalf and/or Company’s out-of-area travel expenses. These expenses, to the extent they are reasonable and have been approved in writing by Customer, will be separately charged to Customer.

4. **Payment; Late Charges; Other Remedies.** Company will invoice Customer monthly for the charges incurred in the preceding month. Invoices are due and payable on receipt, and will be considered past due if not paid within thirty (30) days of receipt. Any sums not paid within thirty (30) days of receipt of Company's invoice will be subject to a late charge in the amount of two percent (2%) per month until paid. Additionally, in the event of past-due sums, Company may in its discretion, upon five (5) business days' written notice to Customer: (a) discontinue providing services under this Agreement and applicable Addendum or Addenda, and/or (b) restrict physical access to colocation space (if applicable), until Customer has paid all past-due amounts and is current on all continuing fixed charges. During any period of suspension of services as provided herein, no Service Interruption (as described in the pertinent Addendum or Addenda) shall be deemed to have occurred. Company shall incur no liability to Customer by reason of or arising out of such suspension of services.

5. **Subcontracting.** Company may subcontract work to be performed under this Agreement to qualified third parties; however, no such subcontracting shall be deemed to relieve Company of any of its obligations hereunder.

6. **Proprietary Rights to Intellectual Property and Materials.** All reports, specifications, computations, test data, and other materials prepared by Company for the specific use and benefit of Customer and incorporated into Customer's equipment and/or system(s) shall be and remain the property of Customer. Except as just provided, and provided that the same does not interfere with or infringe upon Customer's trade secrets or other Customer-specific proprietary interests, Company retains all right title and interest in and to all equipment, materials, tools and procedures utilized in connection with its performance of services hereunder, including without limitation all software source code, intellectual property rights, patents, copyrights, trademarks, and trade secrets appurtenant thereto.

7. **Publicity/Trademarks.** Company shall be permitted to identify Customer as a customer of Company, to use Customer's name in connection with proposals to prospective customers of Company, to hyperlink from Company's web site to Customer's home page, to display Customer's logo as well as quotes and case studies provided by or related to Customer with respect to the services provided by Company on Company's web site and in electronic or printed presentations or marketing materials, and otherwise to refer to Customer in print or electronic form for marketing or reference purposes. Except as set forth in the previous sentence, each party may display or refer to the other party's proprietary indicia, trademarks, service marks, trade names, logos, symbols and/or brand names only upon the advance written approval of the other party, such approval not to be unreasonably withheld or delayed.

8. **Noninterference.** In no event shall Customer cause, or permit its employees, representatives, contractors or invitees to cause, any interference with or damage to equipment, materials or facilities owned, leased or operated by Company. It is expressly understood and agreed that if Customer, or any of its employees, representatives, contractors or invitees, causes such interference or damage, Customer shall promptly and diligently take action to eliminate, repair or remedy such interference or damage. Customer shall be liable for all expenses, costs, losses and damages sustained by Company as a result of such interference or damage, and shall defend and indemnify Company for any such expenses, cost, loss and/or damage, as provided in paragraph 12 hereof, "Reciprocal Indemnification; Hold-Harmless."

9. **Company's Representations and Warranties**

a. **Non-Infringement; Title.** Company represents, warrants and covenants to Customer that none of the Intellectual Property, any other software or equipment or any other resources provided by Company under this Agreement will infringe, misappropriate or otherwise violate any patent, copyright, trademark, service mark, trade secret or other intellectual property right of any third party. Company represents and warrants to Customer that it is either the owner of, or authorized to distribute and use, the Intellectual Property utilized and developed by Company.

b. **Conformance and Further Actions.** Company represents, warrants, and covenants to Customer that the IT services will be provided in conformance with their respective documentation and the relevant terms of this Agreement. Without limitation of any of Customer's rights under this Agreement, in the event of any failure to fulfill this warranty, Company shall take all necessary or appropriate actions (within reason) to correct such failure.

c. **DISCLAIMER OF WARRANTIES.** THE WARRANTIES SET FORTH IN SUBPARAGRAPHS 9(a) AND 9(b), ABOVE ARE IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY IS NOT RESPONSIBLE FOR ANY LOSS CUSTOMER MAY SUFFER AS A RESULT OF THE SERVICES PROVIDED BY COMPANY, INCLUDING, BUT NOT LIMITED TO, DATA LOSS AND/OR OTHER LOSSES RESULTING FROM DELAYS, IMPROPER OR INCOMPLETE DELIVERY OR INFORMATION, INTERRUPTION OF SERVICE, OR OTHERWISE, REGARDLESS OF CAUSE.

10. Limitation of Liability. In no event shall Company be liable to Customer for lost profits of Customer or special, incidental, or consequential damages (even if Company has been advised of the possibility of such damages).

11. Confidentiality.

a. **Confidentiality.** Each party acknowledges that during the course of this Agreement such party may have access to and become acquainted with various confidential and proprietary information of the other party, including trade secrets, inventions, innovations, processes, information, records, and/or specifications owned or licensed by the other party and/or used by the other party in connection with the operation of that party's business, including, without limitation, business and product processes, methods, customer lists, accounts, and procedures. Each party recognizes the confidentiality of such materials and agrees that it will not disclose any of them, directly or indirectly, or use any of them in any manner, either during the term of this Agreement or at any time thereafter, except as required in the performance of such party's duties under this Agreement and strictly in accordance with the terms of this Agreement.

b. **Limitation on Confidentiality Restrictions.** Subparagraph 11(a) does not apply to any information that (i) is already lawfully in the receiving party's possession (unless received pursuant to a nondisclosure agreement) prior to this engagement; (ii) is or becomes generally available to the public through no fault of the receiving party; (iii) is disclosed to the receiving party by a third party who may properly transfer or disclose such information without restriction; (iv) is required to be disclosed by the receiving party as a matter of law (provided that the receiving party shall use all reasonable efforts to provide the disclosing party with prior notice of such disclosure to attempt to obtain a protective order); (v) is disclosed by the receiving party with the disclosing party's approval; or (vi) is independently developed by the receiving party without any use of any of the disclosing party's confidential information. In all cases, the receiving party will use all reasonable efforts to give the disclosing party not less than ten (10) days' prior written notice of any disclosure of confidential information under this Agreement. The parties will maintain the confidentiality of all confidential and proprietary information learned pursuant to this Agreement for a period of ten (10) years from the date of termination of this Agreement.

12. Reciprocal Indemnification/Hold-Harmless. Each of the parties hereto agrees to indemnify and hold the other party, its owners, agents and/or representatives (hereinafter collectively the "Indemnitee") harmless against and from any loss, liability, claim, action, cause of action, damage or expense, of any sort (including reasonable attorneys fees and expenses), brought by a third party against Indemnitee, arising out of any action or inaction by the indemnifying party, its officers, agent and/or representatives (hereinafter collectively the "Indemnitor"), acting pursuant to this Agreement, except to the extent that actions or inactions of Indemnitee are a contributing factor to the injury alleged in the third-party claim. Nothing herein shall be construed as negating, abridging or otherwise reducing any other right or obligation of indemnity which would apply to the parties in absence of this paragraph. As soon as the party claiming indemnification hereunder has notice of any such claim, etc., being asserted against it, said party (the Indemnitee party) shall promptly notify the other party (the Indemnitor party), and shall assist the Indemnitor party in defending any such third-party claim, at however no more than nominal expense to the Indemnitee. At its election Indemnitor shall have the right to control the defense of and any settlement of the claim at issue.

13. Rights and Remedies on Breach of the Agreement.

a. **Rights of Termination for Cause.** Either party may terminate this Agreement, without penalty: (a) on not less than fifteen (15) days' written notice from the aggrieved party to

the other party, for any material breach of this Agreement, which breach is not cured within ten (10) days following receipt by the party in default of a notice specifying the breach and requiring its cure; (b) immediately upon written notice, if (i) all or a substantial portion of the assets of the other party is or are transferred to an assignee for the benefit of creditors, to a receiver, or to a trustee in bankruptcy, (ii) a proceeding is commenced by or against the other party for relief under bankruptcy or similar laws and such proceeding is not dismissed within forty-five (45) days, or (iii) the other party is adjudged bankrupt.

b. **Other Rights on Breach.** Each party has and reserves all rights and remedies afforded it by operation of law or otherwise to enjoin the unlawful or unauthorized use by the other party of the aggrieved party's intellectual property or other proprietary information, and shall retain all other rights, in law or equity, arising out of the other party's breach or default.

14. Survival of Provisions Following Termination. Upon the termination of this Agreement, for any reason, all rights granted under the Agreement shall be terminated, and neither party shall have any further obligation under the terminated Agreement, except that (a) Customer remains obligated to pay Company for services which have been performed or are then in progress, and for unreimbursed reimbursable expenses up to the effective date of the termination; and (b) the provisions of paragraphs 2, 7, 8, 10, 11, 12, 13, 16, and 17, and subparagraphs 20(d) and 20(g), shall survive termination of the Agreement.

15. Non-Solicitation Provision. During the term of this Agreement and any extension thereof, and for a period of twelve (12) months following the termination of this Agreement for any reason, Customer shall not, directly or indirectly, solicit or encourage to leave the employment of or engagement by Company any employee or consultant of Company who has, at any time within the immediately prior twelve (12) month period, performed more than incidental services for Customer pursuant to this Agreement; nor shall Customer solicit any such employee or consultant who has left Company's employment or engagement within twelve (12) months following such termination of such employment or engagement.

16. Arbitration. Any claim or controversy arising out of or relating to the performance of this Agreement which the parties are unable to resolve between themselves shall be settled by arbitration, before a single arbitrator situate, unless the parties otherwise contemporaneously agree, in the City and County of San Francisco, State of California. The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association, except that prehearing discovery shall only be permitted if and to the extent the arbitrator, on petition duly made, shall determine, and except that, unless explicitly invoked contemporaneously by the parties or pursuant to the next-following sentence, the arbitrator need not be a member of the American Arbitration Association; moreover, anything herein to the contrary notwithstanding, the compensation of the arbitrator, however chosen, may be specifically determined between the parties and the chosen arbitrator without regard for any schedule of charges established by the American Arbitration Association. In the event the parties are unable, within a period of forty-five (45) days after demand has been made, one to the other, to agree upon an arbitrator, the same shall be appointed, on request of either party, by the American Arbitration Association located in San Francisco, California, or alternatively by the Presiding Judge of the Superior Court of the State of California in and for the City and County of San Francisco. Costs of the arbitration proceeding (other than a party's own attorney's fees) shall be shared equally by the parties unless otherwise determined and allocated by the arbitrator. The arbitrator shall also have the authority to award attorneys' fees, as set forth in subparagraph 20(d) hereof. Judgment upon the arbitration award rendered by the arbitrator may be entered in any court of competent jurisdiction.

17. Status of Company as an Independent Contractor. Company is engaged as an independent consultant to Customer to provide IT services as provided under the terms of this Agreement. Company is not and will not be an employee, partner, agent or joint venturer of or with Customer. Customer shall not be responsible for withholding, nor shall it withhold, taxes with respect to Company's compensation hereunder. Company shall have no claim against Customer hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

18. Notices. Except as otherwise provided in this Agreement, notices required to be given pursuant to this Agreement shall be in writing and shall be effective when received. Notice may be hand-delivered; sent by facsimile or by e-mail with confirmation of receipt; sent by

postage-prepaid first class mail, return receipt requested; or sent by overnight courier service with proof of delivery; and addressed as follows:

If to Company: Think Connected, LLC
 Attn: Legal Department
 365 Main Street
 San Francisco, CA 94105
 Fax: 510-291-3076
 E-mail: legal@thinkconnected.com

If to Customer: Ravenswood City School District

 2120 Euclid Ave
 East Palo Alto, CA 94303
 Fax: _____
 E-mail: _____

Either party may change its address for purposes of the paragraph by written notice to the other party given in the manner provided above.

19. Force Majeure. Neither party shall be liable nor deemed to be in default for any delay or failure in performance under this Agreement or Addenda resulting, directly or indirectly, from circumstances beyond such party's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other third party labor disturbance, interruption of or delay in transportation, unavailability of interruption or delay in telecommunications or third party services (including DNS propagation) (each a "force majeure" event). The parties shall however make good faith efforts to perform under the Agreement, to the extent reasonably possible, in the event of any such circumstance.

20. Miscellaneous.

a. Assignment. Neither party shall assign or transfer any of its rights or obligations under this Agreement except as otherwise may be agreed in writing by the other party, in the exercise of its reasonable discretion. Except as contemporaneously agreed otherwise, any assignment of this Agreement, or any part of it, shall not dilute or void any provisions of this Agreement, nor relieve the assigning party from liability arising under it. Notwithstanding the provisions of the first sentence hereof, either party may, without securing the other party's consent, assign this Agreement and the assigning party's rights and obligations under it, in whole or in part, to any successor of the assigning party created by way of business line spin-off, merger, consolidation, or the acquisition of substantially all of such party's business and relating assets.

b. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of any permitted successors and/or assigns of the parties hereto.

c. Modification; Waiver. This Agreement may not be modified or amended except in a writing signed by an authorized agent of each party. The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

d. Attorneys' Fees. If any arbitration or judicial proceeding shall be brought to enforce this Agreement or any arbitration award issued pursuant to this Agreement, or otherwise arising out of this Agreement, the prevailing party in such proceeding shall be entitled to recover, in addition to such other relief as the adjudicating tribunal shall provide, the reasonable attorneys' fees, costs and expenses incurred by said prevailing party in connection with such proceeding, in such sum as shall be awarded by the court or arbitrator, as applicable, in the said proceeding or in a separate proceeding instituted for the purpose.

e. Severability. If any provision of this Agreement should be prohibited or invalid under applicable law, such provision shall be construed as ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, which shall be interpreted so as most harmoniously to reflect the basic intent and integrity of this Agreement.

f. Entire Agreement. This Agreement, along with the pertinent Addendum and/or Addenda and attachments appurtenant thereto, constitute(s) the final and complete understanding between the parties, and replaces and supersedes all previous oral or written agreements, understandings, or arrangements between the parties with respect to the subject matter contained in this Agreement.

g. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective as of the date first recited above.

[signatures on following page]

Company

THINK CONNECTED, LLC,
a California limited liability company

By: _____

Managing Member

Customer

Ravenswood City School District
a

By: _____

[Signature]

[Printed Name]

[Title]