

FULLERTON JOINT UNION HIGH SCHOOL DISTRICT  
DATA CENTER SITE SERVICES-KALMUS

This AGREEMENT is hereby made and entered into this 1st day of July, 2021 by and between the Orange County Superintendent of Schools, 200 Kalmus Drive, Costa Mesa, California 92628, hereinafter referred to as SUPERINTENDENT, and Fullerton Joint Union High School District, 1051 West Bastanchury Road, Fullerton, California 92833, hereinafter referred to as DISTRICT. SUPERINTENDENT and DISTRICT shall be collectively referred to as the Parties.

NOW, THEREFORE, the Parties hereto mutually agree as follows:

1.0 BASIS OF AGREEMENT. The purpose of this AGREEMENT is to provide a secure off-site location for DISTRICT to store its servers, storage and back-up appliances for its data application systems. SUPERINTENDENT'S Data Center facilities are located at 200 Kalmus Drive, Costa Mesa, California 92628-9050 will serve as DISTRICT'S Data Center.

2.0 TERM. The term of this AGREEMENT shall be for one (1) year commencing July 1, 2021 and ending on June 30, 2022, subject to termination set forth in this AGREEMENT.

3.0 NETWORK SECURITY. DISTRICT will be on a virtual network specific for school districts participating in Data Center site services. DISTRICT will be responsible for server security for hardware located in SUPERINTENDENT'S Data Center facility. SUPERINTENDENT assumes no responsibility for any security or data breach on DISTRICT'S hardware, software, and data.

4.0 USE. SUPERINTENDENT grants DISTRICT a non-exclusive, non-

1 assignable limited license to store its servers, storage and back-up  
2 applications for its data application systems in SUPERINTENDENT'S Data  
3 Center solely for the purposes of serving as a Data Center site.  
4 DISTRICT will have the right to use SUPERINTENDENT'S Data Center  
5 facilities as long as the Data Center is maintained and supported by  
6 the SUPERINTENDENT.

7 5.0 SERVICES.

8 A. SUPERINTENDENT will use industry standard efforts to  
9 maintain SUPERINTENDENT'S facilities and equipment required to deliver  
10 data co-location site services to DISTRICT. SUPERINTENDENT'S services  
11 shall include the following:

- 12 1. All utilities necessary to operate an appropriate  
13 system environment including air conditioning, power  
14 distribution, uninterrupted power supply, redundant  
15 generated power supply.
- 16 2. An access control system to access building during off  
17 hours for SUPERINTENENT'S staff.
- 18 3. An access control system with scramble pads to access  
19 SUPERINTENDENT's Data Center during off hours for  
20 SUPERINTENDENT's IT staff.
- 21 4. Dual (redundant) electrical circuits in Data Center.
- 22 5. Each electrical circuit has its own 150 KVA UPS  
23 currently running at 18% capacity.
- 24 6. Each UPS feeds a PDU that has 82 circuits.
- 25 7. Each PDU provides two (2) electrical circuits to each  
rack so that both the top and bottom portion of a rack  
has dual electrical power strips.

- 1           8.    A diesel generator rated at 985 horse power/600kW with  
2               a 3,000 gallon fuel tank that should sustain power for  
3               3-5 days. (Note: During previous outages, the UPS have  
4               kept the servers running with no disruption of  
5               services. Within 8-10 seconds, the generator turns on  
6               with power transferring from the UPS to the generator.  
7               When power is restored and has run continuously with  
8               no additional outages for 30 minutes, the generator  
9               turns off and transfers power back to the dedicated  
10              power through the UPS.)
- 11          9.    Redundant air conditioning units so that the system  
12               can provide adequate cooling in the event of a unit  
13               failure. Staff is notified of heat increase in the  
14               Data Center.
- 15          10.   Inergen gas fire suppression system with a full  
16               discharge reducing the oxygen level from 24% to 14%  
17               which will not sustain a fire.
- 18          11.   Pre-active sprinkler system so that there is no water  
19               in the system until it is needed.

20           B.   DISTRICT shall be solely responsible for all of DISTRICT's  
21   data and maintenance and upkeep of its servers, storage and back-up  
22   appliances for its data application system equipment. SUPERINTENDENT  
23   may, upon mutual agreement of the parties, provide other services which  
24   include but are not limited to troubleshooting network problems that  
25   may arise. The DISTRICT shall pay SUPERINTENDENT for such additional  
  services at a rate mutually agreed between the parties.

          C.   SUPERINTENDENT shall provide escorted access of authorized

DISTRICT personnel to hosted equipment during normal Monday through Friday from 7:00 a.m. - 5:00 p.m., excluding SUPERINTENDENT'S holidays. DISTRICT shall provide SUPERINTENDENT a list of personnel authorized to access SUPERINTENDENT'S Data Center.

6.0 PAYMENT. DISTRICT agrees to pay SUPERINTENDENT the sum of One hundred twenty-five dollars (\$125.00) per 2U space per month. DISTRICT will receive quantity of one connection handoff up to 10 gigabits connection to SUPERINTENDENT'S equipment. Any additional connections will incur a cost of Fifty dollars (\$50.00) per month for each 1 gigabit connection and One hundred twenty-five dollars (\$125.00) per month for each 10 gigabits connection. Payment shall be made upon execution of this AGREEMENT and receipt of an invoice from SUPERINTENDENT.

7.0 INDEPENDENT CONTRACTOR. SUPERINTENDENT is and at all times shall be an independent contractor and shall be wholly responsible for the manner in which the services required by the terms of this AGREEMENT are performed. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between SUPERINTENDENT and DISTRICT. SUPERINTENDENT assumes the responsibility for the acts of its employees or agents as they relate to the services to be provided. SUPERINTENDENT, its officers, agents, and employees, shall not be entitled to any rights, and/or privileges of DISTRICT'S employees and shall not be considered in any manner to be DISTRICT'S employees.

8.0 HOLD HARMLESS.

A. SUPERINTENDENT hereby agrees to indemnify, defend, and hold harmless DISTRICT, its Governing Board, officers, agents, and employees from liability and claims of liability for bodily injury, personal

1 injury, sickness, disease, or death of any person or persons, or damage  
2 to any property, real personal, tangible or intangible, arising out of  
3 the negligent acts or omissions of employees, agents or officers of  
4 SUPERINTENDENT or the Orange County Board of Education during the period  
5 of this AGREEMENT.

6 B. DISTRICT hereby agrees to indemnify, defend, and hold  
7 harmless SUPERINTENDENT, the Orange County Board of Education, and its  
8 officers, agents, and employees from liability and claims of liability  
9 for bodily injury, personal injury, sickness, disease, or death of any  
10 person or persons, or damage to any property, real, personal, tangible  
11 or intangible, arising out of the negligent acts or omissions of  
12 employees, agents or officers of DISTRICT during the period of this  
13 AGREEMENT.

14 9.0 NON-DISCRIMINATION. SUPERINTENDENT and DISTRICT agree that  
15 they will not engage in unlawful discrimination because of race, color,  
16 religious creed, national origin, ancestry, physical handicap, medical  
17 condition, marital status, or sex of such persons.

18 10.0 APPLICABLE LAW. SUPERINTENDENT and DISTRICT agree to comply  
19 with all federal, state and local laws, rules and regulations and  
20 ordinances that are now or may in the future become applicable to  
21 SUPERINTENDENT or DISTRICT's business, equipment and personnel engaged  
22 in operations covered by this AGREEMENT or occurring out of the  
23 performance of such operations.

24 11.0 ASSIGNMENT. DISTRICT or SUPERINTENDENT shall not subcontract  
25 or assign the performance of any of the services in this AGREEMENT  
without prior written approval of the other party.

12.0 TOBACCO USE POLICY. In the interest of public health, the

1 SUPERINTENDENT provides a tobacco-free environment. Smoking or the  
2 use of any tobacco products are prohibited in buildings and vehicles,  
3 and on any property owned, leased or contracted for by the  
4 SUPERINTENDENT pursuant to SUPERINTENDENT Policy 400.15. Failure to  
5 abide with conditions of this policy could result in the termination  
6 of this AGREEMENT.

7 13.0 TERMINATION. SUPERINTENDENT or DISTRICT may terminate this  
8 AGREEMENT with or without cause, upon the giving of thirty (30) days  
9 prior written notice to the other party.

10 14.0 NOTICES. All notices or demands to be given under this  
11 AGREEMENT by either party to the other shall be in writing and given  
12 by: i) Personal service, or ii) U.S. Mail, mailed either by registered  
13 or certified mail, return receipt requested, with postage prepaid.  
14 Service shall be considered given when received if personally served  
15 or, if mailed, on the third (3rd) day after deposit in any U.S. Post  
16 Office. The address to which notices or demands may be given by either  
17 party may be changed by written notice given in accordance with the  
18 notice provisions of this section. As of the date of this AGREEMENT  
19 the addresses of the parties are as follows:

20 DISTRICT: Fullerton Joint Union High School District  
21 1051 West Bastanchury Road  
Fullerton, California 92833  
Attn: \_\_\_\_\_

22 SUPERINTENDENT: Orange County Superintendent of Schools  
23 200 Kalmus Drive  
Costa Mesa, California 92626  
24 Attn: Patricia McCaughey

25 15.0 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.

16.0 GOVERNING LAW. The terms and conditions of this AGREEMENT shall be governed by the laws of the State of California, with venue in Orange County, California.

17.0 ENTIRE AGREEMENT/AMENDMENT. This AGREEMENT and any exhibits attached hereto constitute the entire agreement between SUPERINTENDENT and DISTRICT regarding the services and any agreement made shall be ineffective to modify this AGREEMENT in whole or in part unless such agreement is embodied in an Amendment to this AGREEMENT which has been signed by both Parties. This AGREEMENT supersedes all prior negotiations, understandings, representations and agreements.

IN WITNESS WHEREOF, the Parties hereto have caused this AGREEMENT to be executed.

DISTRICT: FULLERTON JOINT UNION  
HIGH SCHOOL DISTRICT

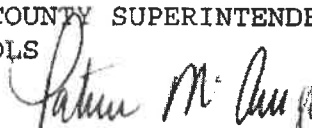
BY: \_\_\_\_\_  
Authorized Signature

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

ORANGE COUNTY SUPERINTENDENT  
OF SCHOOLS

BY:  \_\_\_\_\_  
Authorized Signature

PRINTED NAME: Patricia McCaughey

TITLE: Administrator

DATE: April 13, 2021

FJUHSD(51446)-Data Center Site Services-Kalmus(Co-location)2021-2022  
Zip5