

PROFESSIONAL SERVICES AGREEMENT FOR SERVICES INVOLVING CONTACT WITH OR ACCESS TO STUDENTS STATEMENT OF THE PARTIES

This AGREEMENT is made between The Santa Clara County Office of Education, a California public agency hereinafter called "SCCOE" and _____, hereinafter called "CONTRACTOR," to furnish certain services described in Appendix A, entitled "Scope of Work" which is attached to and incorporated herein by reference, upon the terms and conditions stated in this Agreement. SCCOE and CONTRACTOR shall be collectively referred to as "the Parties" for the purposes of this Agreement.

1. TERM

- 1.1. The term of this Agreement shall be for a period beginning on _____ and ending on _____, unless otherwise terminated in accordance with Section 13 of this Agreement.

2. REPRESENTATIONS AND COMPLIANCE WITH LAWS

- 2.1. CONTRACTOR warrants and represents that CONTRACTOR and its personnel have the required licenses, certifications and Department of Justice clearance(s) to perform the scope of services described in Appendix A, Scope of Work, including such work as may involve contact with students.
- 2.2. CONTRACTOR further certifies that CONTRACTOR is not been suspended or disbarred from public contracting or otherwise precluded from performing the services to be provided pursuant to this Agreement due to any violation of laws or regulations that may be applicable said services. CONTRACTOR shall comply with all applicable laws, codes, ordinances, rules, regulations and resolutions.

3. COMPENSATION AND PAYMENTS

- 3.1. Not to Exceed Amount. The compensation paid by SCCOE under this Agreement shall be in an amount not to exceed \$ _____ inclusive of all travel and lodging, taxes, fees, costs, overhead, and expenses. Any amendment to this Agreement which increases the compensation paid hereunder shall be in writing and fully executed by SCCOE and CONTRACTOR. SCCOE shall not be responsible for any tax liability, costs or expenses arising out of or related to CONTRACTOR's performance of this Agreement.
- 3.2. Certifications and Clearances Required. CONTRACTOR acknowledges and agrees that SCCOE may withhold funds otherwise due pursuant to this Agreement if CONTRACTOR and, or its personnel do not have the necessary certifications and clearances for contact with students and the Scope of Work to be performed under this Agreement requires such contact, or contact with students is likely to occur.
- 3.3. Schedule of Payments. The compensation paid to CONTRACTOR pursuant to this agreement shall be made in accordance with agreed upon rates and performance milestones set forth in the Appendix B hereto, entitled "Compensation and Schedule of Payments", which is incorporated herein by reference.
- 3.4. Payments. Payments will be made upon SCCOE's receipt of CONTRACTOR's invoice, which shall be accompanied by supporting documentation and contain sufficient detail as determined by the SCCOE responsible administrator. The parties understand and agree that SCCOE shall not reimburse CONTRACTOR for charges or expenses which are identified as non-reimbursable expenses in Appendix B.
- 3.5. Acceptance of Defective Work. The parties understand and agree that SCCOE has the right to withhold payments from CONTRACTOR for any unsatisfactory service until such time as service is performed satisfactorily. SCCOE may temporarily accept work that SCCOE deems to be defective or unsatisfactory and require that CONTRACTOR remedy or replace its defective or unsatisfactory work at

CONTRACTOR'S sole expense. Payments made pursuant to this Agreement shall not waive or diminish CONTRACTOR obligation to perform its duties under this Agreement to the satisfaction of SCCOE and in accordance with the dates and milestones set forth in Appendix B, Compensation and Schedule of Payments, nor shall payments to CONTRACTOR waive or diminish CONTRACTOR'S obligation to remedy or replace its unsatisfactory work or performance if CONTRACTOR is requested to do so by SCCOE in accordance this Agreement. The parties understand and agree that SCCOE shall not pay interest or late charges for sums which may be due, or which may become due to CONTRACTOR under this Agreement.

- 3.6. SCCOE may correct or replace CONTRACTOR's unsatisfactory or defective work if after five (5) calendar day's written notice, to CONTRACTOR, CONTRACTOR fails or refuses to correct the defective or unsatisfactory work and the cost of SCCOE's repair or replacement of said defective work shall be deducted from any amounts due or to become due to CONTRACTOR under this Agreement.

4. KEY PERSONNEL

- 4.1. The parties acknowledge that CONTRACTOR was selected by SCCOE to provide the services within the scope of work of this Agreement in part on the basis of the qualifications of CONTRACTOR staff. CONTRACTOR shall ensure that Key Personnel identified in "Appendix B, Compensation and Schedule of Payment" are available to perform work and assigned to perform the work under this Agreement as long as such Key Personnel are employed by CONTRACTOR.
- 4.2. CONTRACTOR will obtain prior written acceptance of the SCCOE responsible administrator to change Key Personnel. CONTRACTOR shall provide the SCCOE responsible administrator with such information as necessary to determine the suitability of proposed new Key staff. The SCCOE responsible administrator shall act reasonably in evaluating Key Personnel qualifications. Such acceptance by the SCCOE responsible administrator of a change in Key Personnel or identification of Key Personnel in the initial Agreement shall not constitute any assumption of responsibility or liability on the part of SCCOE for the individuals identified as Key Personnel's ability to perform.

5. INDEPENDENT CONTRACTOR

- 5.1. CONTRACTOR or any agent or employee of CONTRACTOR shall be deemed at all times to be an independent contractor and not an employee of the SCCOE. CONTRACTOR shall be wholly responsible for the manner in which it performs the services required of it under this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the SCCOE and CONTRACTOR or its agents and employees. Any direction from the SCCOE shall be construed as providing for direction as to conformity to SCCOE policy and not as the means by which such a result relating to CONTRACTOR's work is obtained. The SCCOE does not retain the right to control the means or the method by which CONTRACTOR performs work under this Agreement.
- 5.2. CONTRACTOR shall be solely responsible for all costs and expenses incidental to the performance of services as outlined in Appendix A, including but not limited to, all costs of equipment, all employee, agent, and subcontractor costs, all fees, fines, licenses, bonds, state and federal income tax, unemployment insurance, and all applicable withholdings required or imposed against CONTRACTOR or CONTRACTOR's employees, interns, volunteers, subcontractors, agents or representatives.

6. USE OF SCCOE EQUIPMENT

- 6.1. CONTRACTOR will supply all tools and instruments required to perform the services under this Agreement. CONTRACTOR is not required to purchase or rent any tools, equipment or services from SCCOE.
- 6.2. SCCOE maintains student educational records containing personally identifying information and health information which is protected under state and federal law. If CONTRACTOR has a legitimate educational interest that requires that CONTRACTOR access protected educational records to perform CONTRACTOR's scope of work under this Agreement, and if CONTRACTOR is permitted the use of SCCOE equipment for the purpose of accessing protected files through SCCOE's computer network with restricted access, such use of SCCOE equipment shall not constitute an employer relationship between CONTRACTOR and SCCOE. SCCOE shall not be responsible for any damages, including damage to persons or property arising out of or related to CONTRACTOR's use of any SCCOE equipment.

7. INSURANCE

Without in anyway limiting CONTRACTOR's liability pursuant to the "Indemnification" section of this Agreement,

CONTRACTOR shall procure and maintain during the full term of this Agreement the following insurance amounts, coverage and endorsements:

- 7.1. General Liability Insurance with limits not less than \$1,000,000 (one million dollars) each occurrence Combined Single Limit for Bodily Injury and Property Damage.
- 7.2. General Liability Insurance Endorsements
 - a. General Liability Insurance Endorsement or separate coverage for Negligence Related to Sexual Abuse or Molestation providing coverage for allegations of wrongful acts or negligence should an injury occur as a result of sexual abuse. Such coverage shall provide for defense outside of liability limits and provide liability coverage of \$3 million per sexual abuse injury. Such insurance must include coverage for sexual abuse perpetrated by an intern, psychologist, counselor, employees, officer or director, business invitee, volunteer or representative, and agent.
 - b. Each and every General Liability policy and endorsement shall include the following:
 1. Name as Additional Insured the Santa Clara County Office of Education, its Board, officers, employees, interns, volunteers, agents and representatives and invitees.
 2. State that such policy is primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement and that such policies apply separately to each insured against who claim is made or suit is brought.
 3. If any policies are written on a claims-made form, CONTRACTOR agrees to maintain such insurance continuously in effect for three years following completion of this Agreement or extend the period for reporting claims for three years following the completion of this Agreement, such that occurrences which take place during the Agreement period shall be insured for three years following completion of the Agreement.
- 7.3. Statutory Workers' Compensation Insurance, with Employer's Liability limits not less than \$1,000,000 (one million dollars) each accident. CONTRACTOR agrees to release, indemnify and hold harmless SCCOE from all claims, fines, and actions, including any award by a Workers' Compensation tribunal or similar administrative body, or in a court of law, arising out of claims by an employee or agent of CONTRACTOR or its subcontractor for work related injuries arising out of the performance of this Agreement.
- 7.4. Professional Liability (E & O) Insurance with limits not less than \$1,000,000.00 (one million dollars) each occurrence and in the aggregate. Coverage must at a minimum apply to negligent Errors and Omissions arising out of professional services, performed under the contract, with any deductible not to exceed \$100,000 each claim. If the insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.
- 7.5. Automobile Liability Insurance which shall include coverage for owned, non-owned, and hired autos, bodily injury and property damage liability limits not less than \$2,000,000 per accident.

8. VERIFICATION OF INSURANCE COVERAGE

- 8.1. The CONTRACTOR shall furnish certificates of insurance to the SCCOE responsible administrator for review and approval at the time of signing this Agreement. The Certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims at the time of execution of the contract to the CONTRACTOR. CONTRACTOR shall maintain coverage with AM Best rating of A-VII or higher for the term of this contract. CONTRACTOR shall provide written notice to SCCOE Risk Management of any material change, cancellation and/or notice of non-renewal of the insurance within ten (10) calendar days of the change. CONTRACTOR shall furnish a copy of the insurance policy or policies upon request of SCCOE Risk Management within (10) ten calendar days of written request.

9. INDEMNIFICATION

- 9.1. CONTRACTOR shall hold harmless, indemnify and defend SCCOE, its Board, officials, agents, and employees, interns, volunteers and representatives harmless from any and all claims, losses and causes of actions which may arise out of the performance of this Agreement as a result of any act of negligence or negligent omission, recklessness, or intentionally wrong conduct of the CONTRACTOR or its sub-contractors. The CONTRACTOR shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits related to work performed under this Agreement, in the name of SCCOE when applicable, and shall pay all costs, including without limitation reasonable attorneys' fees and appellate attorney's fee, and judgments which may issue thereon. The CONTRACTOR's obligation under this paragraph shall not be limited in any way to the agreed upon contract price, or the CONTRACTOR's limit of, or lack of, sufficient insurance protection and shall apply to the full extent that it is caused by the negligence, act, omission, recklessness or intentional wrongful conduct of the CONTRACTORS, its agents, employees, interns, volunteers, subcontractors, servants or representatives.

10. DEFAULT

- 10.1. If CONTRACTOR fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then CONTRACTOR shall be in default. Upon the occurrence of a default hereunder SCCOE, in addition to all remedies available to it by law, may immediately, upon written notice to CONTRACTOR, terminate this Agreement whereupon all payments, advances, or other compensation paid by the SCCOE to CONTRACTOR while CONTRACTOR was in default shall be immediately returned to the SCCOE. CONTRACTOR understands and agrees that termination of this Agreement under this section shall not release CONTRACTOR from any obligation accruing prior to the effective date of termination. In the event of termination due to default, in addition to the foregoing, SCCOE may also suspend or withhold reimbursements from CONTRACTOR until such time as the actions giving rise to default have been cured.
- 10.2. CONDITIONS CONSTITUTING DEFAULT. A finding of Default and subsequent termination for cause may include, without limitation, any of the following:
- a. CONTRACTOR fails to obtain or maintain the insurance or endorsements, certifications, licenses, and, or clearances herein required.
 - b. CONTRACTOR fails to comply, in a substantial or material sense, with any of its duties under this Agreement, with any terms or conditions set forth in this Agreement.
 - c. CONTRACTOR fails to commence the work to be performed under this Agreement within the time provided or contemplated herein, or fails to complete the work to be performed under this Agreement in a timely manner as required by this Agreement and/or stated in Appendix A Scope of Work and Appendix B Compensation and Schedule of Payments.
 - d. CONTRACTOR fails to submit an invoice for work performed within sixty (60) days of completion of the contract.
- 10.3. TIME TO CURE DEFAULT. The SCCOE Responsible Administrator shall provide written notice to CONTRACTOR as to a finding of default, and CONTRACTOR shall take all necessary action to cure said default within five (5) calendar days of the Default or a longer time as SCCOE may state in said notice, after which time the SCCOE may terminate the Agreement. The SCCOE Responsible Administrator at his/her sole discretion may allow additional days to perform any required cure if CONTRACTOR provides written justification deemed reasonably sufficient.

11. DISPUTE RESOLUTION

- 11.1. Prior to any action or resort to any legal remedy, SCCOE and CONTRACTOR agree to exercise reasonable efforts, and to negotiate in good faith, to amicably resolve any dispute that may arise concerning the performance by either party of their obligations under this Agreement. If SCCOE's and CONTRACTOR'S Responsible Administrator cannot resolve disputes through such negotiations, then the each Parties' representative will escalate the dispute to their respective executives who shall have authority to resolve the controversy and who are at a higher level of management than the representatives conducting the initial negotiation.
- 11.2. CONTRACTOR understands and agrees that all disputes between it and SCCOE based upon an alleged violation of the terms of this Agreement by the SCCOE shall be submitted for resolution in the following manner:

- 11.3. The initial step shall be for the CONTRACTOR to notify the SCCOE Responsible Administrator in writing of the dispute and submit a copy to the SCCOE Risk Manager.
- 11.4. Should the CONTRACTOR and the SCCOE Responsible Administrator fail to resolve the dispute the CONTRACTOR shall submit their dispute in writing, with all supporting documentation, to the Chief Business Officer. Upon receipt of said notification the Chief Business Officer shall review the issues relative to the dispute and issue a written finding.
- 11.5. Should the CONTRACTOR and the Chief Business Officer fail to resolve the dispute the CONTRACTOR shall submit their dispute in writing within five (5) calendar days of the issuance of the written finding to the Deputy Superintendent. Failure to submit such appeal of the written finding within the stipulated timeframe shall constitute acceptance of the finding by the CONTRACTOR. Upon receipt of said notification the Deputy Superintendent shall review the issues relative to the dispute and issue a written finding.
- 11.6. If the executives cannot resolve the dispute to the satisfaction of both Parties, then SCCOE and Contractor may attempt to mutually agree on the conditions under which such unresolved disputes can be referred to mediation or non-binding arbitration.

12. MEDIATION - WAIVER OF JURY TRIAL

- 12.1. In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the performance of this Agreement and/or following the completion of the work to be performed under this Agreement the parties to this Agreement agree, that all disputes between them shall be submitted to non-binding mediation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Santa Clara County, State of California, or another mutually agreeable location if the parties so agree in writing. The parties will split the costs of a certified mediator on a 50/50 basis. The CONTRACTOR agrees to include such similar contract provisions with all Sub-CONTRACTORS, volunteers, interns, agents, and/or independent contractors and/or CONTRACTOR's retained for the project(s), thereby providing for non-binding mediation as the primary mechanism for dispute resolution.
- 12.2. In an effort to expedite the conclusion of any litigation the parties voluntarily waive their right to jury trial or to file permissive counterclaims in any action arising under this Agreement.

13. TERMINATION

SCCOE'S RIGHT TO TERMINATE

- 13.1. SCCOE, through its Responsible Administrator has the right to terminate this Agreement for any reason or no reason, upon ten (10) days' written notice. Upon termination of this Agreement, all charts, sketches, studies, drawings, and other documents, including all electronic copies related to work authorized under this Agreement, whether finished or not, must be turned over to the Responsible Administrator. The CONTRACTOR shall be paid all sums earned up to the date of termination as stated in the written notices provided by SCCOE, in accordance with provisions of Appendix B, Compensation and Schedule of Payments, provided that said documentation is turned over to the Responsible Administrator within ten (10) business days of termination. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by CONTRACTOR until all documentation is delivered to the Responsible Administrator.
- 13.2. CONTRACTOR shall have no recourse or remedy from a termination made by SCCOE except to retain the fees earned and already disbursed as compensation for the satisfactory work that was performed in complete compliance with the Agreement, as full and final settlement of any claim, action, demand, cost, charge or entitlement it may have, or will, have against SCCOE, its officials, employees, interns, agents or representatives.

CONTRACTOR'S RIGHT TO TERMINATE

- 13.3. The CONTRACTOR shall have the right to terminate this Agreement, in writing, following breach by SCCOE, if the breach of contract has not been corrected within sixty (60) days from the date SCCOE receipt of a written statement from CONTRACTOR specifying its breach of its duties under this Agreement.

- 13.4. The termination provisions set forth an incremental process for termination that allows the parties the opportunity to communicate regarding their dispute and attempt to informally resolve the matter before terminating the Agreement and thereby avoid unnecessary interruption or costs associated with litigation.

14. CONFLICT OF INTEREST

- 14.1. CONTRACTOR warrants and represents that it has read, understands and will comply with the Conflict of Interest laws and requirements for the State of California. CONTRACTOR further represents that to the best of his/her knowledge there exists no actual or potential conflict between the CONTRACTOR's family, business or financial interest and the services provided under this Agreement, and in the event of any change in either private interests or services under this Agreement. CONTRACTOR will immediately notify SCCOE of any question regarding possible conflict of interest which may arise as a result of such change.

15. OWNERSHIP OF CREATIONS AND WORK FOR HIRE

- 15.1. CONTRACTOR agrees that all developments, ideas, written and, or recorded material, copyrightable creations, works of authorship, and other contributions (herein collectively referred to as "Creations"), whether or not copyrighted or copyrightable, conceived, made, developed, created or acquired by CONTRACTOR, either individually or jointly, which relates in any manner to CONTRACTOR's work for SCCOE under this Agreement (regardless of the extent developed at CONTRACTOR's or SCCOE's facilities, at an individual's home, or elsewhere), shall be deemed to be a work made for hire initially owned by SCCOE. To the extent that this provision does not effectively transfer such rights, CONTRACTOR, and its employees, agents, subcontractors do hereby sell, assign, and transfer to SCCOE CONTRACTOR's right, title and interest (worldwide) in and to such Creations and all intellectual property rights thereto.
- 15.2. All tracings, plans, documents, drawings, specifications, maps, computer files, and/or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, including all electronic digital copies, will be considered works made for hire and will, based on incremental transfer, become the property of SCCOE upon payments made to CONTRACTOR or termination of the Agreement, without restriction or limitation on their use and will be made available on request to SCCOE at any time during the performance of such services and/or upon completion or termination of this Agreement. CONTRACTOR shall not copyright any material and products or patent any invention developed under this Agreement. SCCOE shall have the right to visit the site for inspection of the work and the products of CONTRACTOR at any time. The foregoing provisions shall survive the term and termination of this Agreement.

16. PRIVACY OF STUDENT RECORDS

- 16.1. CONTRACTOR and its employees, interns, volunteers, subcontractors agents and representatives shall comply at all times with the requirements relating to the confidentiality of "Protected Health Information" (PHI) as that term is defined in the Health Insurance Portability and Accountability Act of 1996 and the rules and regulations thereunder (collectively, "HIPAA") as is necessary for the performance of the duties and responsibilities under this agreement. CONTRACTOR and its employees, interns, volunteers, subcontractors, agents and representatives' failure to comply with the provisions shall constitute a material breach of this agreement. It is possible that in providing the services, CONTRACTOR and its employees, interns, volunteers, subcontractors, agents and representatives may have or be provided access to "protected health information" (PHI) as that term is defined in "HIPAA, CONTRACTOR and its employees, interns, volunteers, subcontractors, agents and representatives acknowledges that all protected health information shall be treated as confidential information.
- 16.2. If CONTRACTOR obtains access to student education records in connection with the work performed under this Agreement, CONTRACTOR agrees to hold all student education records that it may receive pursuant to this Agreement in strict confidence, and further agrees not to re-disclose such records except as authorized by applicable law or regulation or by the parent or guardian's prior written consent in accordance with federal and state law, including, but not limited to the "Family Education Rights and Privacy Act" (FERPA) as amended 20 U.S.C. 1232g; 34 C.F.R. § 99.33 (a), (b) and California Education Code § 49064 and §49076.
- 16.3. Limitation on Use. CONTRACTOR agrees to use each student education record that it may receive pursuant to this Agreement solely for a purpose(s) consistent with its authority to access that information pursuant to Federal and State law, as may be as applicable. (34 C.F.R. § 99.33 (a) (2).)

- 16.4. Recordkeeping Requirements. CONTRACTOR agrees to comply with the requirements governing maintenance of records of each request for access to and each disclosure of, student education records set forth under Title 34, Code of Federal Regulations § 99.32 and under Education Code § 49064 as applicable.
- 16.5. Acknowledgement of Receipt of Notice of Family Educational Rights Privacy Act Regulations. By signature of its authorized representative or agent on this Agreement, CONTRACTOR, hereby acknowledges that it has been provided with the notice required under 34 C.F.R. § 99.33(d) that it is strictly prohibited from re-disclosing student education records, or personally identifiable information contained in student education records, that it may receive pursuant to this Agreement to any other person or entity except as authorized by applicable law or regulation or by the parent or guardian's prior written consent.
- 16.6. Return or Destruction of Student Education Records. Upon termination, cancellation, expiration, or other conclusion of this Agreement, CONTRACTOR shall return all copies of student records that it has received from SCCOE pursuant to this Agreement within two (2) weeks or, if return of records is not feasible or desirable as determined by SCCOE, CONTRACTOR shall instead promptly destroy any and all copies of SCCOE education records in its possession upon written request from SCCOE and shall further confirm such destruction in writing to SCCOE within two (2) weeks of the destruction of the data.
- 16.7. As a general matter, health information that is included in student educational records is excluded from HIPAA, and is covered by the student records privacy regulations promulgated under FERPA and Cal. Ed. Code § 49076.). Student health information contained in educational records must be protected from disclosure in the same manner as education records that are maintained by an educational institution or agency in compliance with FERPA. (FERPA 20 U.S. Code § 1232g(4)(A) and (6)(1); HIPAA 45 C.F.R. 160.103(2)(i) and (2)(ii)). If CONTRACTOR obtains access to student education records that include health information, in connection with the work performed under this Agreement, whether such health information be oral or recorded in any form or medium, CONTRACTOR agrees to hold all student education records and health information that it may receive pursuant to this Agreement in strict confidence, and further agrees not to re-disclose such records except as authorized by law or regulation or by the parent or guardian's prior written consent. (34 C.F.R. § 99.33 (a), (b); Cal. Ed. Code § 49076 (3).)
- 16.8. Notwithstanding the foregoing, a covered entity may use or disclose protected health information to a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect. (45 C.F.R. § 164.512 (b)(1) (ii); Cal. Ed. Code § 49076 (2)(A).)

17. AUDIT AND INSPECTION OF RECORDS

- 17.1. The CONTRACTOR agrees to maintain and make available to the SCCOE accurate accounting and other records relative to its obligations under this Agreement. The CONTRACTOR will participate promptly and cooperatively in any audits conducted by the SCCOE or its nominee, and permit the SCCOE or a representative to perform an audit, examine and make copies from such books and records during regular business hours at a location in Santa Clara County, California or a mutually agreeable location. The CONTRACTOR shall maintain such data and records for a period of not less than five years after a final payments under this Agreement or until after final audit has been completed, whichever is later.

18. SUBCONTRACTING

- 18.1. The CONTRACTOR is prohibited from subcontracting this Agreement or any services provided pursuant to this Agreement unless such subcontracting is agreed to in writing and executed in the same manner as this Agreement. No party on the basis of this Agreement shall in any way contract on behalf of or in the name of the other party of this Agreement, and violation of this provision shall confer no rights on any third party and shall be void.

19. ASSIGNMENT

- 19.1. It is understood, and agreed that the services to be performed by the CONTRACTOR are personal in character and neither this Agreement nor any duties or obligations hereunder shall be assigned or delegated by the CONTRACTOR without the prior written consent of the responsible administrator or his or her designee.

20. NON DISCRIMINATION

- 20.1. Contractor agrees that it shall not discriminate on the basis of sex, race, religious creed, national origin, age, ancestry, physical disability, marital status, sexual orientation, gender, AIDS/ARC/HIV status, or disability, in its performance under this Agreement.

21. DEPARTMENT OF JUSTICE CLEARANCES AND FINGERPRINTING

- 21.1. CONTRACTOR is required to comply with the criminal background check provisions of Education Code Section 45125.1. CONTRACTOR hereby authorizes SCCOE to conduct criminal background checks with the California Department of Justice (CDOJ) and the FBI for all CONTRACTOR employees, interns, volunteers, subcontractors, agents, and representatives assigned to the SCCOE, and CONTRACTOR will certify that no employees, interns, volunteers, subcontractors, agents, or representatives who have been convicted of serious or violent felonies as specified, will have contact with students being served pursuant to the terms of this Agreement. However, such certification shall not relive the CONTRACTOR, its agents, employees, interns, volunteers, subcontractors, agents and representatives of the obligation to independently complete the background check and fingerprinting process required pursuant to state law. The certification regarding felony conviction does not apply to an employee, agent or volunteer who has obtained a certificate of rehabilitation and pardon pursuant to California Penal Code Section 4852.01 et seq. for a serious or violent felony listed under EC 45122.1.
- 21.2. CONTRACTOR will provide the SCCOE with a list of all employees, interns, volunteers, subcontractors, agents and representatives who may have contact with students being served pursuant of this Agreement, and specify to which SCCOE sites or locations where services will be rendered where the individual will be assigned. Submit list to Human Resources Program Support Services (<https://www.sccoe.org/depts/Human-Resources/talent-management/Pages/student-access.aspx>) at (408) 453-4362 or via email at HRprogramsupport@sccoe.org.
- 21.3. As written certification of its compliance with this Section 21 and each of its subparts, CONTRACTOR will complete and submit the SCCOE Criminal Background Check/Tuberculosis/ Immunization/Mandatory Reporter Training Certification Form ("CBC/TB form") which shall be submitted by CONTRACTOR along with a completed Adult Tuberculosis Risk Assessment Questionnaire and Certificate of Completion for each of CONTRACTOR'S employees, interns, volunteers, subcontractors, agents or representatives that may have contact with or access to students. CONTRACTOR'S written certification must be submitted to Human Resources Talent Management at (408) 453-4362 or via email at Talent_Management@sccoe.org.
- 21.4. CONTRACTOR understands and agrees that as a condition of the Agreement, each of CONTRACTOR's personnel who may have contact with students shall authorize SCCOE in writing to conduct the Live Scan fingerprint process and CONTRACTOR shall immediately upon request by SCCOE, provide: 1) written authorization to SCCOE to perform said fingerprinting; and 2) written authorization for SCCOE to request from the Department of Justice, a background check for CONTRACTOR, and its employees, interns, volunteers, subcontractors, agents, and representatives, including but not limited to subsequent arrest notification, from the Department of Justice regarding the employees, interns, volunteers, subcontractors, agents, and representatives. (Ed. Code §§ 44340 and 44341, 44332.6, 44830.1).
- 21.5. All costs associated with fingerprinting, Department of Justice (DOJ), and Federal Bureau of Investigation (FBI) clearances will be borne by the CONTRACTOR. For any employees, interns, volunteers, subcontractors, agents or representatives that CONTRACTOR hires or otherwise engages subsequent to CONTRACTOR's initial submission of the personnel list to SCCOE, CONTRACTOR shall notify and submit an additional personnel list to SCCOE and immediately provide to SCCOE written authorization for SCCOE to perform fingerprinting and request DOJ and FBI background checks and clearances on CONTRACTOR's subsequent hires or subcontractors prior to CONTRACTOR's subsequent hires performing work under this Agreement. CONTRACTOR shall also immediately provide tuberculosis screening and certificates of completion and immunization certification forms for any CONTRACTOR employees, interns, volunteers, subcontractors, agents and representatives that CONTRACTOR hires subsequent to Contractor's initial submission of the CBC/TB form to SCCOE. All fingerprinting and DOJ clearances must be performed contemporaneously with the commencement of the SCCOE contract.
- 21.6. CONTRACTOR will conduct a FBI and DOJ background check in the state of residence for each of CONTRACTOR's employees, interns, volunteers, subcontractors, agents, and representatives residing

outside of California. CONTRACTOR shall provide SCCOE with CONTRACTOR'S employees, interns, volunteers, subcontractors, agents and representatives' written authorization for SCCOE to review the report of said background checks prior to performance of work pursuant to this Agreement by CONTRACTOR's employees, interns, volunteers, subcontractors, agents, and representatives, who do not reside in the State of California and who may have contact with, or access to students.

- 21.7. When the SCCOE receives clearance from both DOJ and FBI for CONTRACTOR or its personnel as required by California law, the CONTRACTOR will be notified by SCCOE that work can begin under this Agreement. CONTRACTOR shall not permit any employees, interns, volunteers, subcontractors, agents and representatives to have any contact with pupils on any SCCOE site, or SCCOE related activity until the Agreement has been fully executed and CONTRACTOR's employees, interns, volunteers, subcontractors, agents and representatives have completed and been notified by SCCOE Talent Management of the satisfactory fulfillment of requirements set forth in this Agreement regarding the DOJ, FBI fingerprinting and background check and tuberculosis and immunization records certification and clearance process. Failure by CONTRACTOR to comply with this Section may result in termination of this Agreement at the SCCOE's sole discretion.

22. MANDATED REPORTER TRAINING

- 22.1. Our organization is committed to creating and maintaining an environment where everyone feels comfortable, respected, and free from unlawful discrimination, harassment, retaliation and abusive conduct.

We have adopted two interactive courses designed to assist CONTRACTORS to understand their rights, responsibilities, and our policies regarding discrimination, harassment, and abusive conduct.

In order to maintain consistency and reliability in compliance with mandated reporting and promote the health and welfare of students, each CONTRACTOR and its employees, interns, volunteers, subcontractors, agents, and representatives who will or may have access to students through this Agreement shall complete mandated reporter training and harassment and discrimination training provided by SCCOE.

Pursuant to this Agreement, each CONTRACTOR and its employee, agent, intern or volunteer working with or around students shall be identified as a mandated reporter and must complete an SCCOE mandated reporter acknowledgement form and SCCOE mandated reporter training prior to providing services, and must annually undergo such training within the first six weeks of each new school year.

Pursuant to this Agreement, each CONTRACTOR and its employee, agent, intern or volunteer must complete harassment and discrimination training prior to providing services and biennial thereafter.

- 22.2. Those working in our licensed day care facilities must complete an additional mandated reporter training prior to start and annually at the beginning of the school year.

23. TUBERCULOSIS SCREENING

- 23.1. If CONTRACTOR or its personnel may have contact with students, CONTRACTOR shall submit for each employee, intern, volunteer, agent and representative a completed Adult Tuberculosis Risk Assessment Questionnaire and Certificate of Completion confirming that said personnel have completed a tuberculosis risk assessment and certificate of completion within the last sixty (60) days with no tuberculosis risk factors identified or, if tuberculosis risk factors have been identified, has been examined and determined by a licensed health care provider authorized to perform a tuberculosis risk assessment pursuant to Education Code section 49406 that he or she is free of infectious tuberculosis. CONTRACTOR shall submit to SCCOE for each of CONTRACTOR'S employees, interns, volunteers, agents and representatives a completed Adult Tuberculosis Risk Assessment Questionnaire and Certificate of Completion which must be updated and resubmitted every four years.

- 23.2. CONTRACTOR further acknowledges and agrees that CONTRACTOR shall be responsible for the costs of the tuberculosis risk assessment and certificate of completion. CONTRACTOR shall also immediately provide tuberculosis screening and certificates of completion and immunization certification forms for any CONTRACTOR employees, interns, volunteers, subcontractors, agents and representatives that CONTRACTOR hires subsequent to Contractor's initial submission of the CBC/TB form to SCCOE.

24. DAY CARE FACILITIES IMMUNIZATIONS AND EXEMPTIONS

- 24.1. Each employee and volunteer shall be immunized against influenza, pertussis and measles and receive an influenza vaccination between August 1 and December 1 of each year, unless exempt from doing so pursuant to Health and Safety Code § 1596.7995.
- 24.2. If CONTRACTOR or its personnel may have contact with students at a day care center, CONTRACTOR shall submit immunization records for each employee, agent, and intern subcontractor or volunteer and a list identifying such persons by name.
- 24.3. Contractor acknowledges and agrees that:
- a. CONTRACTOR shall be responsible for the costs of the immunizations.
 - b. CONTRACTOR certifies and agrees that its employees, interns, volunteers, subcontractors, agents, and representatives may only be exempt from this requirement if they submit a written statement from a physician licensed pursuant to Business and Professions Code Section 2050 declaring that because of the person's physical condition or medical circumstances, immunization is not safe; or submits a written statement from a physician licensed pursuant to Business and Professions Code Section 2050 providing that the person has evidence of current immunity.

25. WAIVER

- 25.1. SCCOE's failure at any time to enforce any default or right reserved to it, or to require performance of any of the Agreement's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of any such default or right to which SCCOE is entitled, nor shall it in any way affect the right of SCCOE to enforce such provisions thereafter.

26. VENUE

- 26.1. This Agreement shall be governed by the laws of the State of California. The venue for all litigation relative to this Agreement shall be Santa Clara County.

27. SECTION HEADINGS

- 27.1. The section headings contained herein are for convenience in reference and are not intended to define the scope of any provision of this Agreement.

28. EXECUTION OF THE AGREEMENT, EXECUTION IN COUNTERPARTS

- 28.1. Original copies of this Agreement shall be executed by the respective party's authorized signatory(ies). This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument and shall become a binding agreement when one or more counterparts have been signed by each of the parties and delivered to the other.

29. SEVERABILITY

- 29.1. If any term or provision of this Agreement shall be found illegal or unenforceable, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

30. NOTICE TO PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing the same in the United States Post Office, postage prepaid and registered, as follows:

NOTICE TO THE SCCOE OFFICE:

Santa Clara County Office of Education

Division: _____

1290 Ridder Park Drive, MC _____

San Jose, CA 95131

Ph: _____ Fax: _____

Email: _____

NOTICE TO THE CONTRACTOR

CONTRACTOR	
CONTACT PERSON NAME	
STREET ADDRESS	
CITY	
STATE	
ZIP	
TELEPHONE	
FAX	
EMAIL ADDRESS	
TAXPAYER I.D.	

31. NO THIRD PARTY BENEFICIARY

No persons other than the CONTRACTOR and SCCOE shall have any rights whatsoever under this Agreement.

32. SIGNATURES OF THE PARTIES

CONTRACTOR
APPROVED BY:

Print Name

Print Contractor Company Name

Title

Signature Date

SANTA CLARA COUNTY OFFICE OF
EDUCATION APPROVED BY:

Print Name

Print Title

Signature Date

**APPENDIX A
SCOPE OF SERVICES**

Description of Services – The services to be performed pursuant to this Agreement include the following:

If additional space is required, please continue on the following page.

SERVICE LOCATION

Address
City, State, Zip

Project Milestones and Deliverables – CONTRACTOR shall submit invoices to SCCOE at the completion of each project milestone provided pursuant to this Agreement in accordance with the dates and times set forth in Schedule B Compensation and Schedule of Payments. Payments will be due upon completion and acceptance of the deliverables specified herein.

Project Milestone List project milestones and number them below	Date for Completion ("On or about" when date is not established)	Location ("On or about" when location is not established)

Deliverables and Acceptance Criteria

Deliverables List project deliverables and number them below	Acceptance Criteria

**APPENDIX B
COMPENSATION AND SCHEDULE OF PAYMENTS**

Total Compensation Amount

The total not to exceed amount of this Professional Services Agreement is

\$ _____.

Key Personnel Name / Job Title / Certification List the name, job title, and certification, and rate for each key personnel and number them below	Rate

The services performed under this agreement will be compensated in accordance with the CONTRACTOR rate schedule noted above.

Non reimbursable Expenses - Travel is not a reimbursable expense and all travel costs must be included in the total contract price.

INVOICES

INVOICES FOR LEGAL SERVICES, WORKER'S COMPENSATION, EMPLOYEE BENEFITS, AND STUDENT RELATED MATTERS ARE CONSIDERED TO BE CONFIDENTIAL IN NATURE AND SHALL BE SUBMITTED DIRECTLY TO THE SCCOE RESPONSIBLE ADMINISTRATOR FOR REVIEW AND APPROVAL.

All non-confidential invoices will be submitted directly to Accounts Payable. SCCOE generally will process and pay bills within thirty (30) days from receipt. Each bill shall include an invoice showing the amount of services rendered during the billing period and the fee for such services. If reimbursement of expenses is authorized, CONTRACTOR shall submit invoices for such expenses, including full documentation of each expense incurred. The invoice shall be accompanied by a separate confidential invoice support statement that briefly describes each item of work performed, the identity of the person who performed the work, the time of performance if payment is on an hourly basis, and itemized reimbursable expenses. Payments are subject to a final review upon completion of services or other termination of this contract.

**Request for Taxpayer
Identification Number and Certification**

Go to www.irs.gov/FormW9 for instructions and the latest information.

**Give form to the
requester. Do not
send to the IRS.**

Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

Print or type. See Specific Instructions on page 3.	1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)	
	2 Business name/disregarded entity name, if different from above.	
	3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor ☐ C corporation ☐ S corporation ☐ Partnership ☐ Trust/estate ☐ LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner. ☐ Other (see instructions) _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) _____ (Applies to accounts maintained outside the United States.)
	3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions ☐	
	5 Address (number, street, and apt. or suite no.). See instructions.	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number											
				-				-			
or											
Employer identification number											
					-						

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person	Date
------------------	--------------------------	------

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they

must obtain your correct taxpayer identification number (TIN), which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid).
- Form 1099-DIV (dividends, including those from stocks or mutual funds).
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds).
- Form 1099-NEC (nonemployee compensation).
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers).
- Form 1099-S (proceeds from real estate transactions).
- Form 1099-K (merchant card and third-party network transactions).
- Form 1098 (home mortgage interest), 1098-E (student loan interest), and 1098-T (tuition).
- Form 1099-C (canceled debt).
- Form 1099-A (acquisition or abandonment of secured property).

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

Caution: If you don't return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued);
2. Certify that you are not subject to backup withholding; or
3. Claim exemption from backup withholding if you are a U.S. exempt payee; and
4. Certify to your non-foreign status for purposes of withholding under chapter 3 or 4 of the Code (if applicable); and
5. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting is correct. See *What Is FATCA Reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding. Payments made to foreign persons, including certain distributions, allocations of income, or transfers of sales proceeds, may be subject to withholding under chapter 3 or chapter 4 of the Code (sections 1441–1474). Under those rules, if a Form W-9 or other certification of non-foreign status has not been received, a withholding agent, transferee, or partnership (payor) generally applies presumption rules that may require the payor to withhold applicable tax from the recipient, owner, transferor, or partner (payee). See Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

The following persons must provide Form W-9 to the payor for purposes of establishing its non-foreign status.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the disregarded entity.
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the grantor trust.
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust and not the beneficiaries of the trust.

See Pub. 515 for more information on providing a Form W-9 or a certification of non-foreign status to avoid withholding.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person (under Regulations section 1.1441-1(b)(2)(iv) or other applicable section for chapter 3 or 4 purposes), do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515). If you are a qualified foreign pension fund under Regulations section 1.897(l)-1(d), or a partnership that is wholly owned by qualified foreign pension funds, that is treated as a non-foreign person for purposes of section 1445 withholding, do not use Form W-9. Instead, use Form W-8EXP (or other certification of non-foreign status).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a saving clause. Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if their stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first Protocol) and is relying on this exception to claim an exemption from tax on their scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include, but are not limited to, interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third-party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester;
2. You do not certify your TIN when required (see the instructions for Part II for details);
3. The IRS tells the requester that you furnished an incorrect TIN;
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only); or
5. You do not certify to the requester that you are not subject to backup withholding, as described in item 4 under “*By signing the filled-out form*” above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

See also *Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding*, earlier.

What Is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all U.S. account holders that are specified U.S. persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you are no longer tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

• **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note for ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040 you filed with your application.

• **Sole proprietor.** Enter your individual name as shown on your Form 1040 on line 1. Enter your business, trade, or “doing business as” (DBA) name on line 2.

• **Partnership, C corporation, S corporation, or LLC, other than a disregarded entity.** Enter the entity’s name as shown on the entity’s tax return on line 1 and any business, trade, or DBA name on line 2.

• **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. Enter any business, trade, or DBA name on line 2.

• **Disregarded entity.** In general, a business entity that has a single owner, including an LLC, and is not a corporation, is disregarded as an entity separate from its owner (a disregarded entity). See Regulations section 301.7701-2(c)(2). A disregarded entity should check the appropriate box for the tax classification of its owner. Enter the owner’s name on line 1. The name of the owner entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For

example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner’s name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity’s name on line 2. If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, enter it on line 2.

Line 3a

Check the appropriate box on line 3a for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3a.

IF the entity/individual on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation.
• Individual or	Individual/sole proprietor.
• Sole proprietorship	
• LLC classified as a partnership for U.S. federal tax purposes or	Limited liability company and enter the appropriate tax classification:
• LLC that has filed Form 8832 or 2553 electing to be taxed as a corporation	P = Partnership, C = C corporation, or S = S corporation.
• Partnership	Partnership.
• Trust/estate	Trust/estate.

Line 3b

Check this box if you are a partnership (including an LLC classified as a partnership for U.S. federal tax purposes), trust, or estate that has any foreign partners, owners, or beneficiaries, and you are providing this form to a partnership, trust, or estate, in which you have an ownership interest. You must check the box on line 3b if you receive a Form W-8 (or documentary evidence) from any partner, owner, or beneficiary establishing foreign status or if you receive a Form W-9 from any partner, owner, or beneficiary that has checked the box on line 3b.

Note: A partnership that provides a Form W-9 and checks box 3b may be required to complete Schedules K-2 and K-3 (Form 1065). For more information, see the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

If you are required to complete line 3b but fail to do so, you may not receive the information necessary to file a correct information return with the IRS or furnish a correct payee statement to your partners or beneficiaries. See, for example, sections 6698, 6722, and 6724 for penalties that may apply.

Line 4 Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third-party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys’ fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space on line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2).

- 2—The United States or any of its agencies or instrumentalities.
- 3—A state, the District of Columbia, a U.S. commonwealth or territory, or any of their political subdivisions or instrumentalities.
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities.
- 5—A corporation.
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or territory.
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission.
- 8—A real estate investment trust.
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940.
- 10—A common trust fund operated by a bank under section 584(a).
- 11—A financial institution as defined under section 581.
- 12—A middleman known in the investment community as a nominee or custodian.
- 13—A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
• Interest and dividend payments	All exempt payees except for 7.
• Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
• Barter exchange transactions and patronage dividends	Exempt payees 1 through 4.
• Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5. ²
• Payments made in settlement of payment card or third-party network transactions	Exempt payees 1 through 4.

¹ See Form 1099-MISC, Miscellaneous Information, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) entered on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37).

B—The United States or any of its agencies or instrumentalities.

C—A state, the District of Columbia, a U.S. commonwealth or territory, or any of their political subdivisions or instrumentalities.

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i).

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i).

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state.

G—A real estate investment trust.

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940.

I—A common trust fund as defined in section 584(a).

J—A bank as defined in section 581.

K—A broker.

L—A trust exempt from tax under section 664 or described in section 4947(a)(1).

M—A tax-exempt trust under a section 403(b) plan or section 457(g) plan.

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, enter "NEW" at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have, and are not eligible to get, an SSN, your TIN is your IRS ITIN. Enter it in the entry space for the Social security number. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/EIN. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or Form SS-4 mailed to you within 15 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and enter "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, you will generally have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon. See also *Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding*, earlier, for when you may instead be subject to withholding under chapter 3 or 4 of the Code.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third-party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))**	The grantor*

For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing Form 1041 or under the Optional Filing Method 2, requiring Form 1099 (see Regulations section 1.671-4(b)(2)(i)(B))**	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name on line 1, and enter your business or DBA name, if any, on line 2. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

* **Note:** The grantor must also provide a Form W-9 to the trustee of the trust.

** For more information on optional filing methods for grantor trusts, see the Instructions for Form 1041.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information, such as your name, SSN, or other identifying information, without your permission to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax return preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity, or a questionable credit report, contact the IRS Identity Theft Hotline at 800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 877-777-4778 or TTY/TDD 800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Go to www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and territories for use in administering their laws. The information may also be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payors must generally withhold a percentage of taxable interest, dividends, and certain other payments to a payee who does not give a TIN to the payor. Certain penalties may also apply for providing false or fraudulent information.