

AGREEMENT FOR SERVICES (Technology/Software)

This Agreement for Services ("Agreement") is made and entered into as of the ____ day of _____, 2020 by and between the _____ ("District") and OK to Reopen, Inc. ("OTR") a California Corporation. The District and OTR may collectively be referred to as the "Parties" or individually as a "Party."

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** OTR shall provide the services as further described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services").
2. **Term.** OTR shall commence providing Services under this Agreement on _____, and shall continue through July 1, 2022 ("Term"), unless this Agreement is terminated or otherwise cancelled prior to that time. The Parties may mutually agree on any renewals of this Agreement. Each renewal shall be conditioned upon the District's Governing Board's approval and under a separate contract, if necessary.
3. **Submittal of Documents.** OTR shall not commence the Services under this Agreement until OTR has submitted and the District has approved the following certificate(s) and affidavit(s), and the endorsement(s) of insurance:
 - Signed Agreement
 - Certificate of Compliance for Contracts Under Education Code § 49073.1.
 - Insurance Certificates and Endorsements
4. **Consideration.** OTR agrees to provide District Services pursuant to this Agreement at no cost. As true and valid consideration for providing Services pursuant to this Agreement, OTR may, without fee use, modify and incorporate feedback from the District regarding the Services, for the purposes of further developing and distributing such Services to future clients.
5. **Expenses.** District shall not be liable to OTR for any costs or expenses paid or incurred by OTR in performing Services for District beyond the costs of sending SMS messages through Amazon Web Services. The Parties shall mutually agree on any additional costs or expenses related to this Agreement (e.g., additional training), upon the District's Governing Board's approval and under a separate contract, if necessary. This section on OTR expenses supersedes any other provisions relating to payment of OTR's expenses, including those set forth in the Software License.
6. **Independent Consultant.** The Parties agree that OTR is an independent consultant or business entity that is: (i) free from the control and direction of the District in connection with the performance of the Services, (ii) performing Services that are outside the usual course of the District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that

involved in the Services performed, District being interested only in the results obtained. OTR understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided to employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. OTR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to OTR's employees.

7. **Materials.** OTR shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the Services to be provided pursuant to this Agreement and the Software License.

8. **Performance of Services.**

- 8.1. **Standard of Care.** OTR represents that OTR has the qualifications and ability to perform the Services in a professional manner, with the coordination and participation from District to satisfactorily render the specified Services in accordance with the terms of this Agreement. These include Data Conversion, Project Planning, Setup and Training. OTR's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession.

OTR shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that OTR or its employees may discover. OTR shall have responsibility for discovery of errors, inconsistencies, or omissions.

- 8.2. **Communication.** The Parties agree to participate in regular communication (e.g., meetings, email, telephone, conference call, etc.) on a consistent basis, prior to the software program going live, to discuss strategies, timetables, implementations of Services, and any other issues deemed relevant to the implementation of OTR's performance of Services. The Parties may agree to meet at least monthly, or as requested by either Party, after the program goes live, to address any concerns or to make any adjustments.
- 8.3. **Approval.** The Services completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof in accordance with the project plan as agreed upon by both Parties in accordance with this Agreement.

9. **Grant of License / Title Ownership.** District acknowledges the ownership and protection of OTR's Products (including any and all individual products under the OTR's umbrella and future improvements or enhancements thereto licensed to the District), along with the related documentation and any updates and bug fixes OTR may send to the District ("OTR Products"), as detailed in the Software License.
- 9.1. OTR agrees to grant to District a non-exclusive, non-transferrable, non-sub-license, right and perpetual license to the OTR Products identified on **Exhibit "A."** District shall use the OTR Products solely for its own internal use and for the purposes for which such OTR Products were designed.
- 9.2. District acknowledges that the OTR Products; all source code, object code, user interface, algorithms, development frameworks, system designs, system logic flow, and processing techniques and procedures related thereto; the documentation, any system user documentation, or other documentation related thereto; any copies and derivatives of any of the foregoing, in whole or in part; as well as all copyright, patent, trademark, trade secret and other proprietary rights in any of the foregoing, are and shall remain the sole and exclusive confidential property of OTR.
- 9.3. District recognizes that the OTR Products and documentation have substantial monetary value and are considered TRADE SECRET, PROPRIETARY, and/or CONFIDENTIAL, (the "Confidential Information"). OTR is desirous of maintaining rigorous control over the OTR Products and documentation. District, therefore, agrees that it will exercise due care to prevent disclosure of the OTR Products and documentation to any third party.
10. **Audit.** OTR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of OTR transacted under this Agreement. OTR shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. OTR shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to OTR and shall conduct audit(s) during OTR's normal business hours, unless OTR otherwise consents.
11. **Disputes.** In the event of a dispute between the Parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the Parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, OTR agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in Santa Clara County, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other Party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other Party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution

requirements, the OTR shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the OTR's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the OTR submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

12. Termination.

- 12.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate OTR only for Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by OTR. Notice shall be deemed given when received by OTR or no later than three (3) calendar days after the day of mailing, whichever is sooner.
- 12.2. **For Convenience by OTR.** OTR may, at any time, with or without reason, terminate this Agreement. Notice shall be deemed given when received by District or no later than three (3) calendar days after the day of mailing, whichever is sooner.
- 12.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
 - 12.3.1. Material violation of this Agreement by OTR, including failure to meet any of the District's required specifications, as set forth in this Agreement, in order to integrate and/or implement the program; or
 - 12.3.2. Any act by OTR exposing the District to liability to others for personal injury or property damage.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required Services from another OTR. If the expense, fees, and/or costs to the District exceed the cost of providing the Services pursuant to this Agreement, OTR shall refund up to all dollars invoiced and paid within the previous 365 days. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the District.

13. Indemnification.

- 13.1. To the furthest extent permitted by California and Federal laws, OTR shall indemnify and hold harmless the District and the Governing Board and their agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified District Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of OTR. OTR shall, to the furthest extent permitted by law, defend the Indemnified District Parties at OTR's own expense, including attorneys' fees and costs, from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the OTR. The District shall have the right to accept or reject any legal representation that OTR proposes to defend the Indemnified District Parties.

- 13.2. District will defend OTR against any claim, demand, suit or proceeding made or brought against OTR by a third party alleging that District provided or specified information when used by OTR to create an interaction with any person violates a law (a "Claim Against OTR"). District will indemnify OTR from any damages, attorney fees, and costs finally awarded against OTR as a result or, or for any amounts paid by OTR under a court approved settlement of, a Claim Against OTR, provided OTR (a) promptly give District written notice of a Claim Against OTR, (b) give District sole control of the defense and settlement of the Claim Against OTR (except that District may not settle any Claim Against OTR unless it unconditionally releases OTR of all liability), and (c) give District all reasonable assistance, at District expense.
- 13.3. To the furthest extent permitted by California and Federal laws, District shall indemnify and hold harmless OTR and their agents, representatives, officers, consultants, employees, and volunteers (the "Indemnified OTR Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the District, including but not limited to claims arising from content created or selected by the District that is disseminated by OTR such as survey questions. The District shall, to the furthest extent permitted by law, defend the Indemnified OTR Parties at District's own expense, including attorneys' fees and costs, from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the District, including but not limited to claims arising from content created or selected by the District that is disseminated by OTR such as survey questions. OTR shall have the right to accept or reject any legal representation that the District proposes to defend the Indemnified OTR Parties.

14. Insurance.

14.1. OTR shall procure and maintain at all times that it performs any portion of the Services, the following insurance with minimum limits equal to the amount indicated below.

TYPE OF COVERAGE	MINIMUM REQUIREMENT
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Workers' Compensation	Statutory Limits
Employers' Liability	\$ 1,000,000

14.1.1. Commercial General Liability and Automobile Liability Insurance.

Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect OTR and the District and its agents from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising out of performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

14.1.2. Workers' Compensation and Employers' Liability Insurance.

Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of Section 3700 of the California Labor Code, OTR shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

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

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

15.2.2. All policies except the Professional Liability, Workers' Compensation Insurance, and Employers' Liability Insurance Policies shall be written on an occurrence form.

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

15. **Assignment.** The Services to be performed by OTR pursuant to this Agreement are personal in character and neither this Agreement nor any duties or obligations under this Agreement shall not be assigned by OTR without prior written consent.
16. **Compliance with Laws.** OTR shall observe and comply with all rules and regulations of the District and all federal, state, and local laws, ordinances and regulations. OTR shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If OTR observes that any of the Services required by this Agreement are at variance with any such laws, ordinance, rules or regulations, OTR shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon OTR's receipt of a written termination notice from the District. If OTR knowingly performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, OTR shall bear all costs arising therefrom.
17. **Certificates/Permits/Licenses/Registration.** If applicable, OTR and all OTR's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.
18. **Employment with Public Agency.** OTR, if an employee of another public agency, agrees that OTR will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.
19. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age, and therefore, OTR agrees to comply with applicable federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning

with Government Code section 12900 and Labor Code section 1735 and any applicable District policy. In addition, OTR agrees to require like compliance by all of its subcontractor(s), if applicable.

20. **Site Visits.** OTR expressly acknowledges that the following conditions shall apply to any work performed by OTR and/or OTR's employees on a school site:
 - 20.1. All site visits shall be arranged through the District;
 - 20.2. OTR and OTR's employees shall inform District of their proposed activities and location at the school site, allowing District time to arrange site visits without a disruption to the educational process;
 - 20.3. OTR and/or OTR's employees shall check in with the school office each day immediately upon arriving at the school site;
 - 20.4. Once at such location, OTR and OTR's employees shall not change locations without contacting the District;
 - 20.5. OTR and OTR's employees shall not use student restroom facilities; and
 - 20.6. If OTR and OTR's employees find themselves alone with a student, OTR and OTR's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.
21. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
22. **Evaluation of OTR and OTR's Employees and/or Subcontractors.** The District may evaluate OTR in any way the District is entitled pursuant to applicable law. The evaluation may include, without limitation:
 - 22.1. Requesting that District employee(s) evaluate OTR and OTR's employees and subcontractors and each of their performance.
 - 22.2. Announced and unannounced observance of OTR, OTR's employee(s), and/or subcontractors(s).
23. **Limitation of Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the Amazon Web Service SMS costs provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.
24. **Confidentiality.** OTR and all OTR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. OTR understands that student records are

confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

25. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

If to District:

If to OTR:

Mike Prince
1925 Quail Meadow Rd
Los Altos, CA 94024
mike@oktoreopen.com

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) calendar days after deposit in the United States mail. All notices must be accompanied by a courtesy copy sent via email.

26. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties with respect to the Services to be provided and implemented by OTR, and supersedes all prior discussions, negotiations, and agreements, whether oral or written. The Parties understand and agree that the terms and limitations under this Agreement only apply to OTR's obligation to provide the Services during the Term in accordance with the terms of this Agreement. The Parties understand and agree that the terms and limitations under the Software License only apply to OTR's obligation to grant a software license to the District in accordance with the terms of the Software License. In the event of any conflict or ambiguity of provisions or terms between the two documents, the Parties agree that the language of this Agreement controls. This Agreement may be amended or modified only by a written instrument executed by both Parties. This Agreement is not valid until approved/ratified by the District's Governing Board. Services shall not be rendered until Agreement is approved. This Agreement contains all of OTR's agreements, warranties, understandings, conditions, covenants and representations in regard to the subject matter herein. Neither Party shall be liable for warranties, understandings, conditions, covenants or representations not expressly set forth or referenced in this Agreement. District acknowledges that OTR reserves the right to refuse any different or additional provisions in purchase orders, invoices, or similar documents, and such refused provisions will be unenforceable, unless those provisions are mutually agreed upon by the Parties and incorporated into this Agreement under a separate amendment or contract.
27. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding

brought to enforce the terms and conditions of this Agreement shall be maintained in Santa Clara County.

28. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
29. **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.
30. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
31. **Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
32. **Attorney's Fees; Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs, and attorney's fees.
33. **Tolling of Claims.** OTR agrees to toll all statutes of limitations for District's assertion of claims against OTR that arise out of, pertain to, or relate to contractor's or subcontractors' claims against District involving OTR's Services under this Agreement, until the contractor's or subcontractors' claims are finally resolved.
34. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
35. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
36. **Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.
37. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
38. **Incorporation of Exhibits.** Each exhibit attached hereto are hereby incorporated herein by reference.

[SIGNATURES ON FOLLOWING PAGE.]

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

Dated:

Dated:

District: Mountain View Whisman School District

OTR:

OK to Reopen, Inc.

By:

By:

Print Name: Ayinde Rudolph Ed.D.

Print Name: Mike Prince

Title: Superintendent

Title: Founder

Text

EXHIBIT "A"
OTR'S SCOPE OF SERVICES

OTR shall provide:

1. The "OK to Reopen" webapp for presenting and collecting daily health surveys from staff, students, and parents
2. A web based dashboard for auditing and updating the results of the daily health surveys
3. SMS and email reminders to staff, students, and parents to complete the daily health surveys
4. Technical support for IT staff and nursing staff
5. REST APIs for interacting with the OTR services
6. Documentation for the OTR services
7. Additional feature development to improve the services

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700, in relevant part, provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

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

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

Date: 11/8/2020

OK to Reopen, Inc.

Signature: 

Print Name and Title: Mike Prince, Founder

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

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

OTR and the OTR's agents, personnel, employee(s), and/or subOTR(s) ("OTR Parties") shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1. Accordingly, by checking the applicable boxes below, OTR hereby represents and warrants to District the following:

A. OTR and the OTR Parties, if any, shall **only have limited or no contact** with District students (as determined by District) at all times during the Term of this Agreement.

As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District.

Date:

District Representative's Name and Title:

District Representative's Signature:

B. The following OTR Parties have **more than limited contact** with District students (as determined by District) during the Term of this Agreement:

[Attach and sign additional pages, as needed.]

If OTR is not a Sole Proprietor, all of the OTR Parties noted above, at no cost to District, have completed background checks and have been fingerprinted under procedures established by the California Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI"), and the results of those background checks and fingerprints reveal that none of these OTR Parties have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code; **OR**

If OTR is a Sole Proprietor, all of the OTR Parties noted above have agreed to allow the District to process and submit background checks and fingerprinting, as required by Education Code section 42125.1(k), under procedures established by the California Department of Justice and the Federal Bureau of Investigation, and the results of those background checks and fingerprints must reveal that OTR and none of the OTR Parties, if any, have been arrested or convicted of a serious or violent felony, as defined by the California Penal Code.

As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District.

Date:

District Representative's Name and Title:

District Representative's Signature:

No Services shall commence until such determinations by DOJ and FBI has been made.

OTR further agrees and acknowledges that if at any time during the Term of this Agreement OTR learns or becomes aware of additional information, including additional personnel, which differs in any way from the representations set forth above,

OTR shall immediately notify District and prohibit any new personnel from having any contact with District students until the fingerprinting and background check requirements have been satisfied and District determines whether any such contact is permissible.

OTR's responsibility for background clearance extends to all of its agents, personnel, employee(s), and/or subOTR(s), and employees of OTR Parties coming into contact with District pupils regardless of whether they are designated as employees or acting as independent OTRs of the OTR.

The undersigned does hereby certify that I am a representative of the OTR currently under contract with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of OTR.

Certified by Provider:

Signed: 

Print Name: Mike Prince

Title: Founder

Date: 11/8/2020

Services cannot be rendered until all documentation is submitted and final approval is received by the Board.

END OF DOCUMENT

DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification form is required from the OTR pursuant to Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the OTR or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local agency and a county office of education as defined by California law and requires all OTRs to comply with the provisions and requirements of Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990.

OTR must also comply with the provisions of Health & Safety Code section 11362.3 which prohibits the consumption or possession of cannabis or cannabis products in any public place, including school grounds, and specifically on school grounds while children are present.

OTR shall certify that it will provide a drug-free workplace by doing all of the following:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The person's or organization's policy of maintaining a drug-free workplace.
 - (3) The availability of drug counseling, rehabilitation, and employee-assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
- c. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Agreement be given a copy of the statement required by section 8355(a), and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of the aforementioned Act.

I acknowledge that I am aware of the provisions of Government Code section 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990 and Health and Safety Code section 11362.3.

Certified by Provider:

Signed: *Mike Prince*

Print Name: Mike Prince

Title: Founder

Date: 11/8/2020

END OF DOCUMENT

CERTIFICATE OF COMPLIANCE
FOR CALIFORNIA EDUCATION CODE SECTION 49073.1

THIS CERTIFICATE OF COMPLIANCE IS ATTACHED TO AND IS INCORPORATED INTO THE CONTRACT DOCUMENTS ENTERED INTO BY AND BETWEEN OK TO REOPEN, INC ("PROVIDER") AND _____ ("DISTRICT"), BASED ON THE INDEPENDENT OTR AGREEMENT FOR SERVICES, DATED _____ ("AGREEMENT").

Section 49073.1 of the California Education Code requires incorporation of specific terms in contracts between the school district and a third party under which the purpose is, either or both:

- To provide Services, including cloud-based Services, for the digital storage, management, and retrieval of pupil records.
- To provide digital educational software that authorizes a third-party provider of digital educational software to access, store, and use pupil records in accordance with the Agreement.

The requirements and certifications of California Education Code section 49073.1 shall be incorporated into the Agreement pursuant to this Certificate of Compliance. This Certificate may delete from or modify the terms under the Agreement. To the extent any such addition, deletion, or modification results in any conflict or inconsistency between the Agreement and this Certificate, this Certificate shall govern and the terms of the Agreement which conflict with this Certificate or are inconsistent with this Certificate shall be of no force or effect.

For purposes of this Certificate, the "**Provider**" is the entity identified above and the service provider under the Agreement, and "**data**" is defined as any information supplied to the Provider by the District, including "**pupil records**", which shall mean information directly related to a pupil that is maintained by the District or acquired directly from the pupil. Any violation or noncompliance with the terms under this Certificate will result in action against the Provider that may include the immediate cancellation of contracts, and/or legal action. Individual ignorance of these policies will not be weighed in the consideration of infractions.

1. **DISTRICT PROPERTY.** All pupil records obtained, received, or viewed by the Provider still continue to be the property and under the control of the District. (§49073.1(b)(1).)

Agree: Yes No

2. **LIMITED BY CONTRACT.** Provider will use the pupil records for only those purposes required by or permitted under the Agreement. (§49073.1(b)(3).)

Agree: Yes No

3. **PRIVACY.** Provider will adhere to all provisions of the Federal Family Educational Rights and Privacy Act (FERPA, 20 U.S.C. 1232g), California Education Code and District policies regarding the protection and confidentiality of data. At all times, the organization will consider all data collected in the course of their duties to be the property of and under the control of the District, and protected and confidential. Release of this data can only be authorized by the District's authorized staff member, and state and federal law. (§49073.1(b)(8).)

Agree: Yes No

4. **REUSE.** Provider is prohibited from using personally identifiable information in pupil records to engage in targeted advertising. Provider shall only use the data for the purpose specifically permitted by the Agreement. (§49073.1(b)(9).)

Agree: Yes No

5. **SECURITY.** Provider must present the actions it will take, including designation and training of responsible individuals, to ensure the security and confidentiality of pupil records. Provider understands that compliance with these security measures do not, in itself, absolve Provider of liability in the event of an unauthorized disclosure of pupil records or other data. (§49073.1(b)(5).)

Agree: Yes No

Security & Confidentiality Procedures Attached: Yes No

6. **DELETION OF DATA.** Upon termination or expiration of the Agreement, the Provider will permanently delete all District data from their system as allowed by state and federal law. Provider shall permit District to confirm that no pupil records are retained or available to Provider upon the termination of the Agreement. Requirement for Provider to eliminate pupil records shall not apply to pupil-generated content if the pupil chooses to establish or maintain an account with the third party for the purpose of storing that content. (§49073.1(b)(7).)

Agree: Yes No

7. **DEIDENTIFIED PUPIL RECORDS.** During the term and after termination or expiration of Agreement, Provider is permitted to use deidentified information, including aggregated deidentified information, for only the following purposes: (i) to improve educational products, for adaptive learning purposes, and for customizing pupil learning; (ii) to demonstrate the effectiveness of the operator's products in the marketing of those products; and (iii) for the development and improvement of educational sites, services, or applications. (§49073.1(d)(5)(B).)

Understand: Yes No

8. **DISTRICT PROCEDURES.** Should a parent, legal guardian, or eligible pupil wish to review personally identifiable information in the pupil's records and correct erroneous information, they shall follow the District's current process for review and shall be permitted to correct erroneous information accordingly. In the event of an unauthorized disclosure of a pupil's records, Provider shall work with District to notify the affected parent, legal guardian, or eligible pupil, using the District's current process and protocol for notification. (§49073.1(b)(4) & (6).)

Agree: Yes No

9. **PUPIL-GENERATED CONTENT** (*if applicable*). Pupils may retain possession and control of their own pupil-generated content, and Provider shall permit and assist pupils to transfer their pupil-generated content to a personal account. (§49073.1(b)(2).)

Agree: Yes No Not Applicable

As an authorized representative of my organization, I accept the conditions listed in this Certificate of Compliance.

Certified by Provider:

Signed: 

Print Name: Mike Prince

Title: Founder

Date: 11/8/2020

[END OF DOCUMENT]