

GUIDELINES FOR AGREEMENT FOR SERVICES

This page is informational only and does not form a part of this Agreement.

- 1. INTENDED PURPOSE:** This Agreement covers various types of services with businesses or corporations, including but not limited to consulting, technology, engineering, architectural, legal, medical, training, interpreting, and other professional services. Examples of such services include hiring a consultant for business strategy advice, engaging a software development company for a new project, contracting an attorney for legal advice, or employing a medical expert for specialized training.
- 2. DO NOT USE.** This Agreement is NOT intended for building construction, building/machinery maintenance, building/machinery repairs, transportation, sports officiating, speakers, performing arts, or other limited scope engagements.
- 3. INSURANCE.** Your vendor must carry insurance under this Agreement. Check the appropriate box in Exhibit B to indicate which insurance coverage is required depending on the nature of the services being provided. Insurance must be obtained before commencement of services.
- 4. HOW TO USE.** Fill in all fields of the Agreement and have your vendor sign first. District signature authority is based on the Agreement amount pursuant to [Board Resolution 2022-25](#).
 - Less than \$20,000 – refer to the [Purchasing and Payment Authority Grid](#) to determine signature authority.
 - \$20,000 to [bid limit](#) – Complete the [Contract Routing Sheet](#) for Board ratification and signature by Vice Chancellor, Business Services.
 - Greater than [bid limit](#) - Complete the [Contract Routing Sheet](#) for Board approval and signature by Vice Chancellor, Business Services. **WARNING:** Amounts greater than the [bid limit](#) may require a competitive bid process. [Contact Purchasing](#) for guidance.
- 5. REQUISITION.** After receiving the fully executed Agreement, initiate your Purchase Requisition and upload the Agreement to Banner Document Management as supporting documentation. Once your Purchase Order is established by Purchasing Services, it will be transmitted to your vendor.
- 6. BOND MEASURE PROJECTS.** If services under this Agreement are funded by Measure C or G and less than the bid limit, use the [Bond Contract Routing Sheet](#) to seek approval for Board ratification and authorized District countersignature.

DETACH THIS PAGE BEFORE PROCEEDING.



12345 El Monte Rd.
Los Altos Hills, CA 94022
Foothill College
De Anza College

AGREEMENT FOR SERVICES

This agreement is not a construction contract within the meaning of Civil Code section 2783, and is not an agreement for the provision of construction services within the meaning of Public Contract Code section 20651. Do not use for Public Works, Repairs or Maintenance to a Building.

This Agreement entered into as of the District’s execution date (“Effective Date”), by and between the Foothill-De Anza Community College District, a public educational agency (hereinafter referred to as “District”) and _____, (hereinafter referred to as “Contractor”) Each of District and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.” By signing this Agreement, the Parties acknowledge their acceptance of all the terms and conditions in this Agreement and any Exhibits attached hereto (collectively the “Agreement”).

RECITALS

WHEREAS, pursuant to Foothill-De Anza Community College District Board Policy 3140 and Board of Trustees Resolutions, specified District employees have the duty to engage Contractors, including, Independent Contractors, to perform sundry services for the District, with or without the furnishing of material; and

WHEREAS, Contractor warrants and represents to District that Contractor has the experience, expertise, licensure, and resources to successfully and effectively perform the agreed-upon services and will provide these services to the District in compliance with all applicable laws and regulations

WHEREAS, Government Code Section 8546.7 provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract; and

WHEREAS, the public interest, convenience, necessity and general welfare will be served by this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties agree as follows:

1. AGREEMENT DOCUMENTS.

The documents forming the entire Agreement between District and Contractor shall consist of the District Standard Instructions & Conditions (SIC’s) and this Agreement (pages 1-6) including:
Exhibit A – Services (page 7)
Exhibit B – Insurance Requirements (page 8)
Exhibit C – Data Security Standards (pages 9-10, if applicable)

In the event of any discrepancies or inconsistencies between the provisions of the SIC’s, this Agreement and the Exhibits, the provisions of this Agreement will prevail.

2. PAYMENTS.

In consideration of the payments hereinafter set forth, Contractor shall perform services for District in accordance with the terms, conditions and specifications set forth herein and in Exhibit A attached hereto and by this reference made a part hereof. Contractor shall perform all the services described in Exhibit A for the sum of Not-to-Exceed: \$ _____

In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit A, District shall make payment to Contractor in the manner specified in Exhibit A.3. The District retains the right to increase or decrease the Services, deliverables, or amount of work as it deems appropriate and at its sole discretion.

3. TERM AND TERMINATION.

- a. Initial Term. This Agreement shall be in effect from _____ (start date) through _____ (end date). The District may terminate this contract at any time for any reason by providing 30 days' notice to Contractor. Termination to be effective on the date specified in the notice. In the event of termination under this section, Contractor shall be paid for all work provided to the date of termination.
- b. Option to Extend. This Agreement may be renewed for additional time periods as long as the original Agreement Term plus the renewal periods does not exceed five years, provided that both Parties agree in writing and insurance coverage continues pursuant to the requirements in Exhibit B.

4. RELATIONSHIP OF THE PARTIES.

It is understood that this is an Agreement by and between the District and Contractor(s) and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an Independent Contractor.

5. NON-ASSIGNABILITY AND SUBSTITUTION.

Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of District, and any attempted assignment without such prior written consent in violation of this section automatically shall terminate this Agreement. If particular people are identified in Exhibit A as working on this Agreement, the Contractor will not assign others to work in their place without written permission from the District representative. Any substitution shall be with a person of commensurate experience and knowledge.

6. HOLD HARMLESS AND INDEMNIFICATION.

- a. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the District, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description ("claims"), brought for, or on account of (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) taxes owing by reason of any failure to withhold and/or pay to the government income and/or employment taxes from earnings under this Agreement as made necessary by Section 530 of the Revenue Act of 1978, where the claim results from the act or omission of Contractor including but not limited to the concurrent active or passive negligence of the Contractor or of the District, its officers, agents, employees or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this indemnity obligation shall not apply to injuries or damage for which the District has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.
- b. The duty of the Contractor to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778.4 of the California Civil Code.
- c. Contractor's duty to defend shall be triggered by notice to Contractor that District has been served with a summons or complaint, which alleges facts falling within the scope of Contractor's indemnity obligations.

7. LIMITATION OF LIABILITY.

The District’s financial obligations under this Agreement are limited to the payment of the compensation provided in this Agreement and Exhibit A. Notwithstanding any other provision of this Agreement, in no event, shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed

8. INSURANCE.

Contractor agrees to have and maintain the policies set forth in Exhibit B, entitled “Insurance Requirements,” which is attached hereto and incorporated herein. Contractor agrees to provide District with a copy of said policies, certificates and/or endorsements before work commences under this Agreement.

9. INTELLECTUAL PROPERTY AND DATA SECURITY STANDARDS.

- a. Contractor shall implement appropriate measures designed to ensure the confidentiality and security of all applicable data on behalf of the District, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action that could result in substantial harm to the District or an individual identified through the data or information in the Contractor's custody, as applicable.
- b. Data Security Standards: Contractor agrees to comply with the District’s Data Security Standards set forth in Exhibit C, which is attached hereto and incorporated herein, in the performance of the services. Contractor further agrees that it shall treat all information received through the performance of this Agreement in strict accordance with the standards. Not Applicable if checked.

10. DISABLED ACCESSIBILITY AND ELECTRONIC AND INFORMATION TECHNOLOGIES.

Contractor hereby warrants that any goods or services, including any hardware or software products or services, to be provided under the Agreement comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services, which is brought to its attention. Contractor further agrees to indemnify, defend, and hold harmless the District, the Chancellor's Office of the California Community Colleges, and any California community college using the Contractor's products or services from any claim arising out of its failure to comply with these requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of the Agreement.

11. SOLE PROPERTY OF THE DISTRICT.

Any system or documents developed, produced or provided under this Agreement shall become the sole property of the District. Notwithstanding any other provision herein, any intellectual property discovered or developed by Contractor in the course of performing or otherwise as a result of its work hereunder shall be the sole property of the District.

12. NON-DISCRIMINATION.

No person shall, on the grounds of race, color, national or ethnic origin, religious affiliation or non-affiliation, gender, marital status, sexual orientation, age, physical or mental disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement. Contractor shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Contractor’s personnel policies shall be made available to District upon request.

13. CONFIDENTIALITY.

In performing its duties hereunder, the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by 20 U.S. Code Section 1232g and the Family Education Rights and Privacy Act (FERPA). The Parties agree that such incidental access is not a provision or conveyance or disclosure to Contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall promptly notify the District, refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.

14. FORCE MAJEURE.

- a. General. Neither party hereto shall be deemed to be in default of any provision of this Agreement, or for any failure in performance, resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such “force majeure” acts or events shall include, but may not be limited to, acts of God, civil or military authority, civil disturbance, martial disturbance, strikes, war, federally or locally declared public health emergencies or natural disasters including pandemics, plagues, famines, droughts, fires, floods, loss of utility such as electricity or water, other catastrophes, or other “force majeure” events beyond the parties’ reasonable control.
- b. Notification. Either party shall notify the other in writing as soon as first party knows, or should reasonably know, that a force majeure event has occurred. Provided, District’s notification regarding whether a force majeure event has occurred shall be final and binding on the parties.
- c. Losses. Contractor is not entitled to damages, compensation, or reimbursement from District for losses resulting from any “force majeure” event.

15. HEALTH AND SAFETY REQUIREMENTS.

Contract shall be subject to all District requirements regarding health and safety protocols and must abide by Federal, State, Local government and District’s procedures and policies while on District premises.

16. CHANGES AND ALTERATIONS.

This Agreement shall constitute the entire agreement between the parties respecting the matters covered herein, and supersede any prior or contemporaneous written or oral promises or representations regarding these matters. This Agreement may not be modified or amended except by writing signed by the parties. No changes, alterations, change orders or increases in Contractor compensation, or other variations of any kind, shall occur without the written consent of appropriate authorized District personnel acting within their signatory authority. Contractor acknowledges that other District personnel are without authorization to either order extra and/or changed work, increase compensation, or waive contract requirements, and that Contractor proceeds with any extra work ordered by such unauthorized persons at its own risk, and shall not receive payment therefore.

17. MEDIATION, ARBITRATION, PREVAILING PARTY ATTORNEY’S FEES.

The parties agree that if any dispute or controversy arises between them in any way arising out of, related to, or connected with this Agreement or its subject matter, they will participate in good faith in Mediation and agree to equally share all Mediator fees. If the Parties are unable to resolve the dispute or controversy through Mediation, the Parties agree pursuant to Code of Civil Procedure section 1280 et seq. to submit the pending dispute or controversy to final and binding Arbitration to be held in Santa Clara County, California, with the arbitrator to be supplied by JAMS. By agreeing to this binding Arbitration provision, the Parties understand that they are waiving certain rights and protections which may otherwise be available if a claim were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this arbitration

provision, the right to a jury trial, certain rights of appeal, the right bring a claim as a class member in any purported class or representative proceeding; and a right to invoke certain rules of procedure and evidence. The non-prevailing party in such arbitration shall be responsible for the arbitrator's fee but in all other respects each side shall bear its own costs and attorneys and other fees. The provisions of this section will apply during the term of this Agreement and survive after the termination or expiration of this Agreement.

18. GOVERNING LAW; VENUE.

The rights and obligations of the parties hereunder shall be governed by the laws of the State of California. Venue in any action to enforce or declare rights hereunder shall be in the Superior Court of the County of Santa Clara, and any such action to be stayed by the Court pending contractual Mediation/Arbitration.

19. NOTICE.

All Notices required or permitted to be given under this Agreement by either party to the other, shall be in writing and 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 requested, or sent by overnight delivery services, or facsimile transmissions, addressed as follows:

For Contractor:

Name: _____

Title: _____

Address: _____

City, State, Zip: _____

Phone: _____

Email: _____

For District:

Name: _____

Title: _____

Address: _____

City, State, Zip: _____

Phone: _____

Email: _____

20. PAYMENT OF PREVAILING WAGES. (if applicable)

Except for agreements for a total of \$1000 or less, if Contractor provides public project services Contractor shall pay all workers on the District project the prevailing wage pursuant to the California Labor Code, Sections 1770 through 1777.7.

In Witness Hereof, the Parties have entered into the Agreement on the day and year set forth beneath the respective names below.

FOR CONTRACTOR:	FOR DISTRICT:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

This Agreement is not valid until signed by both Parties above. Board approval is required prior to commencement of services if total cost exceeds the applicable bid threshold for goods and services as reflected on the following Purchasing website link: <http://purchasing.fhda.edu/bid-threshold/index.html>

FOR CAMPUS USE ONLY:	
Originator: _____	Date: _____
FOAP: I _____ F _____ O _____ A _____ P _____	
Campus Finance/Fiscal Services Authorization:	
Name: _____	Signature : _____
Title: _____	Date: _____

EXHIBIT A - SERVICES

1. CONTACTS FOR RENDERING OF SERVICES.

For Contractor:

Primary Contact Name: _____

Primary Contact Email: _____

Primary Contact Phone: _____

For District/Department:

Primary Contact Name: _____

Primary Contact Email: _____

Primary Contact Phone: _____

2. SCOPE OF WORK. Detailed description of services to be performed and work product to be delivered to District by Contractor: (reference and attach additional pages, if necessary)

3. AMOUNT AND METHOD OF PAYMENT. Indicate lump sum payment or rate of pay; also include a list of tasks which must be completed prior to each progress payment and show the timeline for progress payments, if applicable)

___ Single payment upon successful completion of deliverables.

___ Multiples payments. Explain how payments will be made. (i.e., milestone payments, monthly payments, progress payments, etc.

4. TERM. The term of this Agreement shall commence and end on the dates specified in Section 3 of the Agreement.

EXHIBIT B – INSURANCE REQUIREMENTS

Contractor shall not commence work under this Agreement until required insurance certificate has been submitted to the requesting Project Manager. Certificates of insurance shall be issued by an insurer with an A M Best rating of A-VII or better, unless otherwise approved by District Risk Manager. Such certificate shall evidence all coverages and limits required by District in this Agreement and shall specify that insurers will give District thirty (30) days prior written notice of non-renewal or cancellation. The Description of Operations field must be completed indicating that Foothill-De Anza Community College District has been added as an additional insured. This section shall read: "The Foothill-De Anza Community College District, their employees, officers and agents, officers and agents are added as additional insureds." The Certificate Holder shall read: Foothill-De Anza Community College District, 12345 El Monte Rd. Los Altos Hills, CA 94022

Contractor shall maintain in force, throughout the term of this Agreement, insurance as follows:

1. **Commercial General Liability** insurance, with limits not less than \$1,000,000 each occurrence/\$2,000,000 aggregate for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, sexual assault & molestation, broadform property damage, independent contractors, products and completed operations;
2. **Commercial Automobile Liability** insurance, with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; *(to be checked if motor vehicle used in performing services)*
3. **Workers' Compensation** (statutory limits) and Employers' Liability insurance with limits required by law, provided that Contractor has employees as defined by the California Labor Code;
4. **Professional Liability** insurance (required if checked) with limits not less than \$1,000,000 each claim/\$2,000,000 aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed \$50,000 each claim. *(to be checked if services are expected to involve the use of professional knowledge)*
5. **Cyber Liability** insurance with limits not less than \$1,000,000 per occurrence or claim/\$2,000,000 in the aggregate. *(to be checked if services involve access to District Personally Identifiable Information or other sensitive data)*
6. Other Insurance Provisions
 - a. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.
 - b. Waiver of Subrogation. Contractor agrees that in the event of loss due to any perils for which it has agreed to provide Commercial General and Automobile Liability insurance, Contractor shall look solely to its insurance carrier(s) for recovery and grants a waiver of any right to subrogation which any such insurer of Contractor may acquire against the District by virtue of payments of any loss under this insurance
 - c. If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three years following termination of this Agreement.
 - d. General and Automobile liability policies shall include as Additional Insureds, the District, its officers, agents, employees and servants, shall be primary to any other insurance or self-insurance available to the Additional Insureds and shall apply separately to each, except the inclusion of Additional Insureds shall not operate to increase the required limits of such insurance.
 - e. Maintenance of the required insurance is a material condition of this Agreement and failure to maintain such insurance may, at the District's option, result in a declaration of material breach and suspension of Contractor's further work under this Agreement.

EXHIBIT C – DATA SECURITY STANDARDS

1. Security.

Contractor shall provide District with general system security including: (a) physical security of the hosting location, (b) limiting access to District's stored information to individual Contractor employees directly connected with maintaining the database or the associated application software; (c) plans for managing disaster recovery.

2. Return of Materials.

Upon expiration or termination of this Agreement or the licenses granted hereunder, District shall immediately return to Contractor all Licensed Software/Technology and Documentation provided to District, as well as any and all copies thereof. Contractor agrees to cooperate with District to facilitate the retrieval and download of all District data collected by and stored in the Licensed System. Upon District's receipt of the data, Contractor will certify that all District data has been thoroughly and completely removed from the Licensed System.

3. Ownership of District Data.

District, and/or its suppliers and affiliates, retains all right, title and interest (including, without limitation, all proprietary rights) to District Data and District Applications except for rights granted to Contractor and its affiliates under this Agreement. Except as otherwise provided herein, upon termination or cancellation of this Agreement for any reason, Contractor shall return all District Data to District in an agreed upon format, or destroy, at District's option.

4. Data Security.

Contractor has implemented and shall maintain at least industry acceptable standard systems and procedures to ensure the security, confidentiality and integrity of User Data and to reasonably protect against anticipated threats or hazards to the security or integrity of User Data, and against unauthorized access to, use or disclosure of User Data.

5. Nondisclosure of User Data.

Contractor shall hold all User Data in strict confidence and with the same standard of care it uses to protect its own information of a similar nature and shall not use User Data for any purpose other than to provide the Service or as may be authorized in writing by District. Contractor shall not disclose User Data to any other party except: (a) to Contractor employees, agents, subcontractors and service providers, to whom User Data needs to be disclosed for the purpose of providing the Service; (b) as required by law, or to respond to duly authorized information requests of police and governmental authorities or to comply with any facially valid subpoena or court order; (c) protect the rights or property of Contractor or Contractor customers, including the enforcement of Contractor agreements or policies governing District's use of the Service; or (d) as authorized by District in writing. Contractor shall undertake efforts reasonably calculated to ensure that Contractor employees, agents, and subcontractors with access to User Data are aware of Contractor's obligations under this Agreement and are placed under an obligation of confidentiality with respect thereto.

6. Cooperation with Law Enforcement.

To the extent permitted by law, Contractor reserves the right to involve and cooperate with law enforcement or the appropriate legal authorities in investigations of claims of illegal or unauthorized activity involving the Service or any users thereof, violations of applicable laws, to protect Contractor Systems and Contractor's customers and to respond to any violations of this Agreement. District agrees that Contractor is authorized to monitor communications into, and out of, Contractor Systems to prevent the introduction of viruses or other hostile code, to prevent intrusions, and to otherwise enforce the terms of this Agreement. District further agrees that Contractor may, in its sole discretion, disclose any and all District Data including, without limitation, assigned IP numbers, Service history, and Service use to any law enforcement

agent for the purposes specified herein or where Contractor receives a facially valid and lawful search warrant, court order, subpoena or other valid legal order from law enforcement officials, without further consent of District or Users. Notwithstanding the foregoing and to the extent permitted by law and law enforcement, Contractor will make reasonable efforts to notify District when a disclosure of District's Data has or is to be made.

7. Third Party Requests.

If Contractor receives a Third-Party Request, Contractor will, unless it is prohibited by law or by the terms of the Third Party Request: (a) promptly notify District of its receipt of a Third Party Request in a manner permitted by law; and (b) comply with District's reasonable requests regarding its efforts to oppose a Third Party Request.

8. Security Breach.

Contractor will notify District of a Security Breach within seven (7) days of Contractor's verification of a Security Breach. The notification shall include, to the extent possible, (a) the identification of each User whose data has been, or is reasonably believed to have been accessed, acquired, used, or disclosed; (b) the nature of the Security Breach; (c) the date of, and the date of discovery of the Security Breach; (d) a brief description of the types of data that were involved; (e) any steps that Users should take to protect themselves from potential harm resulting from the Security Breach; and (f) a brief description of Contractor's efforts to investigate the Security Breach, mitigate harm to Users, and protect against further Security Breaches. In addition, Contractor shall immediately conduct a reasonable investigation of the reasons for and circumstances surrounding such Security Breach; use best efforts and take all necessary actions to prevent, contain, and mitigate the impact of, such Security Breach; collect and preserve all evidence concerning the discovery, cause, vulnerability, remedial actions and impact related to such Security Breach, which shall meet reasonable expectations of forensic admissibility. Any information Contractor provides to District regarding a Security Breach shall be treated as Confidential Information and subject to the requirements of Section 14.

9. Breach Notification.

District agrees that it shall be District's sole responsibility to determine whether a Security Breach is subject to state, federal or national breach notification laws and requires breach notification ("Breach Notification"). In the event that District determines that a Security Breach requires Breach Notification, Contractor agrees that it will reasonably cooperate with District in regard to District's Breach Notification obligations as specified in state, federal or national breach notification laws, including District's investigation, enforcement, monitoring, document preparation, Breach Notification requirements and reporting. District shall be solely responsible for notifying all individuals subject to Breach Notification.

10. Indemnification by Contractor.

Except to the extent arising from the intentional or negligent acts of the District or its officers, employees, subcontractors and agents, Contractor shall, to the extent permitted by law, defend and hold harmless District, against any and all claims, injuries, damages, costs, penalties, actions, losses or suits, including reasonable attorneys' fees, of a third party alleging (a) that District's use of the Services as permitted under this Agreement infringes or misappropriates the intellectual property rights of a third party; or (b) arising out of or based on a Security Breach. If a Security Breach occurs and is found to be the result of Contractor's breach of its duty to employ the Information Security and results in a Breach Notification obligation, subject to the limit stated in Exhibit B – Section 1.5, Contractor will be liable for reasonable associated costs incurred by District in responding to or recovering from said Security Breach.