

**SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT
AGREEMENT
WITH
Link-Systems international**

This Agreement is entered into this 9 day of May, '2017 by and between the San Mateo County Community College District, a community college district formed and existing under the law of the State of California, having its principal business address at 3401 CSM Drive, San Mateo, CA 94402 (hereinafter called "District") and Link-Systems international, having its principal business address at 4515 George Road, Suite340, Tampa, FL 33634 (hereinafter called "Contractor").

WHEREAS, it is necessary and desirable that Contractor be engaged by District for the purpose of performing services hereinafter described;

NOW, THEREFORE, in consideration of the payments hereinafter set forth, Contractor shall perform services for District in accordance with the terms and conditions set forth herein and in Exhibit A attached hereto and by this reference made a part hereof, and, in consideration of the services rendered in accordance with all terms and conditions set forth herein and in Exhibit A, District shall make payment to Contractor in the manner specified in Exhibit A.

1. **TERM OF CONTRACT.** This Agreement shall commence on May 9, 2017 and terminate on May 31, 2018. Notwithstanding the foregoing, if any applicable law limits the permissible length of the term of this Agreement, then the term of this Agreement shall not extend beyond the length permitted by law.
2. **TERMINATION OF CONTRACT.** The District may, at any time from execution of Agreement, terminate this Agreement, in whole or in part, for the convenience of the District, by giving written notice specifying the effective date and scope of such termination. Termination shall be effective on a date not less than thirty days from notice. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the District and shall be promptly delivered to the District. In the event of termination, Contractor shall be paid for all work satisfactorily performed until termination, except where the contracting department determines the quality or quantity of the work performed is unacceptable. Such payment shall be that portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.
3. **INDEPENDENT CONTRACTORS.** It is understood that this is an Agreement by and between independent contractors and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture of association, or any other relationship whatsoever other than that of independent contractor. Except as District may specify in writing, Contractor shall have no authority, expressed or implied, to act on behalf of District in any capacity whatsoever. Contractor shall have no authority, expressed or implied, pursuant to this Agreement to bind District to any obligation whatsoever.
4. **TIME OF PERFORMANCE.** Time is of the essence and Contractor shall perform the services required by this Agreement in an expeditious and timely manner so as not to unreasonably delay the purpose of this Agreement.
5. **FAIR EMPLOYMENT PRACTICES/EQUAL OPPORTUNITY ACTS.** District is an equal opportunity employer. By entering into this Agreement, Contractor certifies that he/she is in compliance with the Equal Employment Opportunity Requirement of Executive Order 11246, Title VII of the Civil Rights Act of 1973, the California Fair Employment Practices Act and any other Federal or State laws and regulations related to Equal Employment Opportunity. Contractor's personnel policies shall be made available to District upon request.

6. OWNERSHIP OF PROPERTY. All tangible and intangible property developed, produced and/or provided by Contractor under this Agreement shall become the sole property of District. District's ownership of property developed, produced and/or provided under this Agreement includes, but is not limited to, any specifications, drawings, sketches, models, samples, tools, computer programs, technical information, confidential business information, scripts, customer or personnel information or data, written, oral or otherwise (all hereinafter referred to as "Information"), obtained by Contractor from District or developed by Contractor hereunder or in contemplation hereof shall remain or become the sole property of District. Any copyrightable works or other intellectual property developed in connection with this Agreement shall remain or shall become the sole property of District and, in accordance with Education Code section 72207, Contractor understands that the District's governing board may secure copyrights, in the name of the District, to all such works. If Contractor desires to make use of any such District work for any purpose not related to this agreement, Contractor must first secure prior written consent of District for such use. All copies of such Information in written, graphic or other tangible form shall be returned to District upon termination of this Agreement. Information shall be kept confidential by Contractor, shall be used only in performing hereunder, and may be used for other purposes only upon prior written approval of District Executive Vice Chancellor.
7. LICENSES, PATENTS, PERMITS. Prior to commencement of work/services to be performed under this Agreement, Contractor shall apply for, obtain and maintain in current status, at his/her own expense, any license, permit or approval required from any agency for the performance of said work/services, or forfeit any right to compensation under this Agreement.
8. LIABILITY AND INSURANCE. Contractor shall be responsible for all damages to persons or properties that occur as a result of Contractor's or Contractor's employees fault or negligence in connection with the performance of this Agreement.

The Contractor shall take out and maintain during the life of this Agreement such liability insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages and all operations under this Agreement, whether such operations be by himself/herself or by any Subcontractor or by anyone directly or indirectly employed by either of them.

8.1 Required Coverage. Contractor shall procure and maintain liability coverage which shall not be less than the following amounts (unless agreed in writing by the Executive Vice Chancellor's office):

- a. Commercial General Liability and Property Damage insurance including:
Bodily Injury Liability insurance which provides for injuries including accidental death, per any one occurrence in an amount not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate; and Property Damage insurance in an amount not less than \$1,000,000 per occurrence.
- b. Business Automobile Liability insurance in an amount not less than \$1,000,000 including coverage for owned, non-owned and hired vehicles; and
- c. Umbrella liability in an amount not less than \$2,000,000 per occurrence and annual aggregate ; and
- d. Professional Liability (Errors and Omissions): Insurance appropriate to the contractor's profession with limit no less than \$1,000,000 per occurrence or claim, \$1,000,000 aggregate. sh Dist Initials B Contractor Initials

If the Contractor maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.

8.2 **Required Rating.** Insurance carriers must have a Best rating of A(-)X or better.

8.3 **Endorsements and Certificates of Insurance.** San Mateo County Community College District, its Officers, Agents and Employees must be named by endorsement on Contractor's Commercial General Liability and Property Damage Policies as co-insured or additional insured.

Certificates of Insurance and endorsements for coverages required herein shall be filed with District's Executive Vice Chancellor *prior to the commencement of work*. The certificates shall provide that if the policy or policies be canceled by the insurance company or Contractor during the term of this Agreement, thirty (30) days written notice prior to the effective date of such cancellation will be given to District's Executive Vice Chancellor. The certificates shall also show the information that the San Mateo County Community College District is named on Contractor's Commercial General Liability and Property Damage policies as co-insured or additional insured. Certificates shall clearly state that "The San Mateo County Community College District, its Officers, Agents and Employees are named as additional insured per attached endorsement" and that such insurance policy shall be primary to any insurance or self-insurance maintained by the District.

9. **WORKERS' COMPENSATION INSURANCE.** The Contractor shall have in effect, during the life of this Agreement that the Contractor has employees, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor certifies awareness of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and certifies compliance with such provisions before commencing the performance of this work of the Agreement as set forth in California Labor Code section 1861.

Initial this box if you have employees

I am aware of the provisions of Section 3700 of the California 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 the Code, and I will comply with such provisions before commencing the performance of any work required under this Agreement with employees.

Initial this box only if you have no employees and will not submit a Certificate of Workers' Compensation



I have no employees and, therefore, will not submit a Certificate of Workers' Compensation.

10. **INDEMNIFICATION.** Contractor shall indemnify and hold harmless District, its officers, agents, and employees from all claims, suits or actions of every name, kind, description, brought for, or on account of, injuries to or death of any person or damage to property resulting from performance of any work required under this Agreement by Contractor, its officers, agents, employees and/or servants.

The duty of Contractor to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein shall be construed to require Contractor to indemnify District, its officers, agents, and employees against any responsibility or liability in contravention of Section 2782 of the Civil Code.

The indemnification and hold harmless agreement set forth above includes, but is not limited to, Contractor's agreement at its sole expense to indemnify District, its officers, agents and employees from and defend or settle any claim or action brought against District to the extent that it is based on a claim that any services furnished hereunder infringed a patent, copyright, trademark, service mark, trade secret, or other legally protected intellectual property rights. Contractor shall pay all costs, fees (including attorneys' fees) and damages which may be incurred by District, its officers, agents and employees for any such claim or action or settlement thereof.

11. ACCESSIBILITY. Contractor hereby warrants that the products and services to be provided under this 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 in Title 36, Code of Federal Regulations, part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products and services which is brought to Contractor's attention. Contractor further agrees to indemnify and hold harmless the San Mateo County Community College District, its governing board, officers, employees and agents, the California Community Colleges Chancellor's Office, and any California community college using Contractor's products and services from any claim arising out of Contractor's failure to comply with the aforesaid requirements. Failure to comply with the aforesaid requirements shall constitute a breach and shall be cause for termination of this Agreement.
12. ASSIGNABILITY. 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 paragraph 12 is null and void and automatically shall terminate this Agreement. In the event of any assignment, Contractor shall remain liable to District as principal for the performance of all obligations under this Agreement.
13. FAILURE TO PERFORM. If, at any time, in the opinion of District, Contractor fails to render services of proper quality or has failed to perform, keep, and observe any of the terms or conditions herein contained on the part of Contractor to be performed, kept, and observed, District may give Contractor written notice to correct such conditions or cure such default; and if any such condition or default shall continue for ten (10) days after said written notice, then, and in that event, this Agreement shall cease and expire. Thereupon District or its duly authorized representative may employ other parties or carry this Agreement to completion as District may deem proper.
14. FORCE MAJEURE. Neither party shall be responsible for delays or failure in performance resulting from acts beyond the control of such parties. Such acts shall include, but not be limited to, Acts of God, labor disputes, civil disruptions, acts of war, epidemics, fire, electrical power outages, earthquakes or other natural disasters.
15. DISPUTE RESOLUTION. Should any dispute arise out of this Agreement, the parties agree to meet in mediation and attempt to reach a resolution with the assistance of a mutually agreed upon mediator. The mediation process shall provide for the selection, within fifteen (15) days of either party notifying the other of the existence of a dispute, by both parties of a disinterested third person as mediator and shall be concluded within forty-five (45) days from the commencement of the mediation unless a time requirement is extended by stipulation of both parties.

If a mediated settlement is reached, neither party shall be the prevailing party for the purposes of the mediated settlement. Each party agrees to bear an equal quota of the expenses of the mediator.

A party that refuses to participate in mediation or refuses to participate in the selection of a mediator cannot file a legal action. The non-refusing party shall be permitted to file a legal action immediately upon the other party's refusal to participate in mediation or the selection of a mediator.
16. SEVERABILITY. Should any part of this Agreement be declared through a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or to carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexercised portion, can be interpreted reasonably to give effect to the intentions of the parties.
17. AMENDMENTS. This Agreement may be amended only by written instrument signed by both District and Contractor which writing shall state expressly that it is intended by the parties to amend the terms and conditions of this Agreement.
18. GOVERNING LAW AND VENUE. This Agreement, including all exhibits attached hereto and incorporated herein by reference, shall be construed in and governed by the laws of the State of California. The parties consent to the exclusive jurisdiction and venue of the Superior Court of San Mateo County, California.

19. ENTIRE AGREEMENT. This Agreement, including all exhibits attached hereto and incorporated herein by reference, constitutes the sole agreement of the parties hereto and correctly states the rights, duties and obligations of each party. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are of no force or effect. In the event of a conflict between the terms and conditions set forth herein and those in the exhibits attached hereto, the terms and conditions set forth herein shall prevail.
20. WAIVERS. No waiver of default by District of any terms or conditions hereof to be performed, kept, or observed by Contractor shall be construed to be or act as a waiver of any subsequent default of any of the terms and conditions herein contained.
21. NOTICES. All notices to be given between the parties hereto shall be in writing and may be served by commercial express/overnight courier service or by depositing the same in the United States mail, postage prepaid and certified receipt requested and addressed to:

"DISTRICT"
San Mateo County Community College District
Kathy Blackwood, Executive Vice Chancellor
3401 CSM Drive
San Mateo, CA 94402

"CONTRACTOR"
Link-Systems international
4515 George Road, Suite 340
Tampa, FL 33634

Contact:

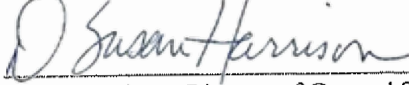
Either party by written notice to the other party may change the address of the notice or the names of the persons or parties to receive written notices.

22. EXPENDITURE OF PUBLIC FUNDS. Contractor agrees to comply with Government Code Section 8546.7 which provides that any contract involving expenditure of public funds in excess of \$10,000 requires that the contracting parties shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under the contract.

- 23. CAPTIONS. Any captions to or headings of the articles, sections, subsections, paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of validity of this Agreement or any provision hereof.
- 24. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.
- 25. EXECUTION. By their signatures below, each of the following represents that they have authority to execute this Agreement and to bind the party on whose behalf their execution is made.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate.

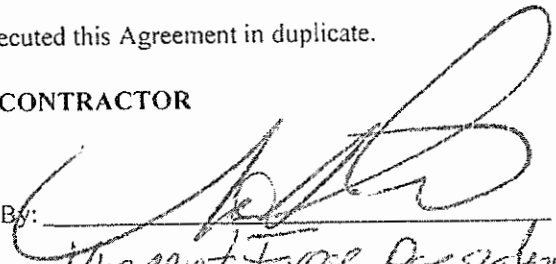
SAN MATEO COUNTY COMMUNITY
COLLEGE DISTRICT

By: 
Susan Harrison, Director of General Services

Date: June 20, 2017

Employer Identification Number: 94-3084147

CONTRACTOR

By: 
Vincent Ferese, President
Name/Title of Authorized Signatory

Date: May 23, 2017

Federal Tax Payer Identification Number (EIN):

35-3376102

EXHIBIT A

Services shall be billed to "San Mateo County Community College District" and become payable after satisfactory completion of services and upon presentation of detailed invoice(s) specifying services being provided. Invoices shall be sent to: SMCCCD, Accounts Payable Office, 3401 CSM Drive, San Mateo, CA 94402.

Location:		
SERVICE TO BE PERFORMED	DATE TO BE COMPLETED BY	PAYMENT AMOUNT
Purchase of 100 hours of online tutoring at \$23.50 per hour.	May 31, 2018	\$2350.00

The total amount paid under this Agreement shall not exceed \$ 2350.00