



MT. DIABLO UNIFIED SCHOOL DISTRICT
1936 Carlotta Drive, Concord, CA 94519 – Phone (925) 682-8000
AGREEMENT BETWEEN MT. DIABLO UNIFIED SCHOOL DISTRICT
AND INDEPENDENT CONTRACTOR

THIS AGREEMENT is dated for convenience this 5th day of September 2024, by and between the Mt. Diablo Unified School District (hereinafter “District”) and Promethean Inc. (hereinafter “Contractor”).

RECITALS

WHEREAS, District is a school district in the County of Contra Costa, State of California, and has its principal place of business at 1936 Carlotta Drive, Concord, CA 94519. District desires to engage the services of Contractor and to have said Contractor render services in accordance with the terms and conditions provided in this Agreement.

WHEREAS, District is authorized to enter into this Agreement pursuant to *Government Code Section 53060* or *Public Contract Code Section 20111*, or both, as set forth below.

NOW, THEREFORE, District hereby engages Contractor to render services under the terms and conditions of this Agreement.

AGREEMENT

1. Performance of Services.

- (a) Contractor agrees to perform the services described on **Exhibit A** (hereinafter “Services”), attached hereto and incorporated herein, as an independent contractor. Contractor will determine the means, manner, method, and details of performing the Services. Contractor shall be responsible for providing the materials, tools and transportation necessary for the performance of the Services. Contractor may, at Contractor’s own expense, use non-District employees to perform the Services under this Agreement. Subcontractors may be used only with the written approval of the District.
- (b) Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of the District. Contractor shall be solely responsible for the professional performance of the Services, and shall receive no assistance, direction, or control from District. Contractor shall have sole discretion and control of Contractor’s Services and the manner in which they are performed.

- 2. **Compensation.** District agrees to compensate Contractor for the performance of the Services on the basis set forth below. Contractor shall be responsible for all expenses incurred in association with the performance of the Services. This Agreement is **NOT TO EXCEED \$77,700.00.**

The basis of the fee for Services shall be as follows:

District staff to check the applicable box.

\$ _____ per hour \$ _____ per day \$12,950.00 per month

District staff to enter the complete Budget Code(s).

(a) 01-7435-1110-1000-34350-000-922-004-5800 \$ 77,000.00

(b) _____ \$ _____

(c) _____ \$ _____

- 3. **Payment Schedule.** The Contractor shall submit to the District an invoice as further set forth below. The District shall review the payment request and, as soon as practical, shall: (i) pay the requested amount; or (ii) inform the Contractor that all or some part of the request is disputed.

Contractor shall submit invoices in accordance with the following schedule:

District staff to check applicable box.

Partial Payments. Commencing on or about November 18, 2024, Contractor shall invoice District on a monthly basis for work performed in the preceding month pursuant to this Agreement. A District Administrator will verify the invoice to ensure that all required Services have been satisfactorily performed.

Scheduled Payments. District shall submit payment to the Contractor per the schedule detailed in "Exhibit A" see page 8 of this Agreement. A District Administrator will verify the invoice to ensure that all required Services have been satisfactorily performed in accordance with the relevant timeline.

Payment in Full. Contractor shall invoice District on completion of the Services. A District Administrator will verify the invoice to ensure that all required Services have been satisfactorily performed.

4. **Term and Termination.**

- (a) **Term.** This Agreement will become effective on or about October 18, 2024 and shall expire on April 18, 2025, or when terminated as set forth below.
- (b) **Termination for Cause.** Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notice to the breaching party. Termination shall be effective immediately on receipt of said notice. Upon termination of this Agreement, District will compensate Contractor only for services satisfactorily rendered to the date of termination.
- (c) **Termination for Convenience.** The District may terminate this Agreement at any time by giving thirty (30) days written notice to the Contractor. Termination shall be effective immediately on receipt of said notice. Upon termination of this Agreement, District will compensate Contractor only for services satisfactorily rendered to the date of termination.

5. **Relationship of the Parties.** Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor be considered an employee of District within the meaning of any federal, state, or local law or regulation including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, workers' compensation, industrial illness or accident coverage, taxes, or labor and employment in general. Under no circumstances shall Contractor look to District as his/her employer, or as a partner, agent, or principal. Contractor shall not be entitled to any benefits accorded to District's employees, including, without limitation, workers' compensation, disability insurance, vacation, or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in the Contractor's name, disability, workers' compensation or other insurance, as well as licenses and permits usual or necessary for conducting the Services hereunder.

Contractor shall pay, when and as due, any and all local, state and federal income or other taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide District with proof of said payments upon demand.

The parties agree that: (1) Contractor shall be responsible for the control and direction of its own employees and personnel in the performance of the Services under this Agreement; (2) the Contractor's personnel shall only perform work that is outside the usual course of the District's business; and (3) Contractor's personnel shall be engaged in business independent of the District. Contractor shall defend and indemnify the District against any claim by any worker that it is actually an employee of the District.

6. **Fingerprinting and Criminal Records Check of Contractor's Employees.** Contractor shall comply with the provisions of *California Education Code Section 45125.1* regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the Contractor and/or its employees. To the extent *Section 45125.1* is applicable, Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the Board of Education of the District that such employee has not been convicted of a felony, as defined in *Section 45125.1*. If required by District, Contractor shall provide to District the fingerprinting certification attached hereto as **Exhibit B** prior to commencing work under this Agreement.

7. **Rules and Regulations.** All rules, policies, and regulations of the Mt. Diablo Unified School District Board of Education, including any rules and regulations related to COVID-19 or other global pandemics, and all federal, state, and local laws, ordinances and regulations are to be observed strictly by Contractor during the performance of Services pursuant to this Agreement.

8. **Indemnification.** Contractor shall hold harmless, defend and indemnify District and its officers, elected and appointed officials, employees, and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of the Services hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the District.

9. **Insurance.** Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, its agents, representatives, employees or subcontractors. 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.

Coverage Minimums shall be at least as broad as:

District staff to check the appropriate boxes.

(a) **Commercial General Liability (CGL):**

Agreements under \$25,000. Insurance Services Office Form CG 0001 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit (with aggregate limit no less than **\$2,000,000**).

Agreements of \$25,000 or more. Insurance Services Office Form CG 0001 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence plus an additional umbrella liability coverage of \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be no less than **\$3,000,000**.

(b) **Automobile Liability.**

ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with a limit no less than **\$1,000,000** per accident for bodily injury and property damage.

For sole proprietors and small businesses using personal vehicles, evidence of personal auto insurance may be accepted by the District as an alternative provided that such personal auto insurance provides coverage for business uses of the insured vehicle.

(c) **Workers' Compensation.**

As required by the State of California, with Statutory Limits, and **Employer's Liability Insurance** with limit of no less than **\$1,000,000** per accident for bodily injury or disease. All California employers must provide workers' compensation benefits to their employees under *California Labor Code Section 3700*.

If the Contractor is a sole proprietor with **no employees**, it may be exempt from this requirement provided the Contractor is self-insured as certified in **Exhibit C**. If the Contractor employs one or more employees, it must provide this type of insurance coverage. The District shall not obtain workers' compensation insurance on behalf of Contractor or Contractor's employees.

(d) **Other Coverages When Applicable.** (District staff to check applicable box(es)).

Professional Liability/Errors & Omissions Liability. \$1,000,000/occurrence, \$2,000,000/aggregate. **Applicable for contractors with professional training providing a specialized advanced service, physicians, accountants, architects, engineers, and brokers**

Sexual Abuse and Molestation Coverage. \$3,000,000/occurrence. **Applicable if the Contractor will be alone with students**

Cyber Insurance. Not less than \$2,000,000 per claim to be maintained for the duration of the Agreement and three years following its termination. **Applicable if the Contractor will be using, storing, or accessing, the District's private, confidential, or protected information**

(e) The District reserves the right to require that Contractor maintain and provide evidence of additional insurance coverages as may be necessary or desirable given the nature of the Services. 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 by the Contractor.

(f) **Additional Insured Status.** The District, its officers, officials, employees, and volunteers are to be named as additional insured by endorsement to the Commercial General Liability policy and to the Sexual Abuse and Molestation policy, if applicable, with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.

(g) **Primary Coverage.** For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as it respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(h) **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the District.

INSURANCE REQUIREMENTS

No waiver will be granted to eliminate the insurance requirements outlined in this contract. However, in special circumstances, certain insurance requirements may be modified or waived. The following items in Insurance, Section 9, are hereby waived or modified as follows (note, a waiver for one type of insurance does not constitute waiver for all):

Limits: _____

Other: _____

Initials of the Superintendent, or designee, are **required** to waive or modify any Insurance requirements in this Agreement:

Superintendent or Designee

Date

10. **Originality; Ownership of Designs and Plans.** Except as to standard generic details, Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services. For the purposes of this Agreement, "Work Product" means (a) any data, databases, materials, documentation, computer programs, inventions (whether or not patentable), designs, and/or works of authorship, including but not limited to, discoveries, ideas, concepts, properties, formulas, compositions, methods, programs, procedures, systems, techniques, products, improvements, innovations, writings, pictures, audio, video, images of Contractor, and artistic works, and (b) any subject matter protected under patent, copyright, proprietary database, trademark, trade secret, rights of publicity, confidential information, or other property rights, including all worldwide rights therein, that, with respect to all of the foregoing, is or was conceived, created or developed in whole or in part by Contractor during the performance of any of the Services for the District under this Agreement, and that either (i) is created within the scope of the Services as described in this Agreement, or (ii) is based on, results from, or is suggested by the Services described in this Agreement. In addition, "Licensed Materials" means any materials that Contractor utilizes for the benefit of the District, or delivers to the District during the course of, or for the purpose of, this Agreement, which (i) may constitute Work Product, (ii) are created by Contractor or its employees or of which Contractor or its employees are otherwise in lawful possession, and (iii) Contractor may lawfully utilize for the benefit of, or distribute to, the District. The District acknowledges and agrees that Contractor shall retain all right, title and interest to any and all Licensed Materials and Work Product that Contractor creates during performance of the Services, and Contractor grants to the District an irrevocable, nonexclusive, worldwide, royalty-free license to: (i) use, copy, perform, display, distribute, or otherwise utilize copies of the Licensed Materials for the District's internal use only, and (ii) prepare, use and distribute derivative works based upon the Licensed Materials for the District's internal use only. District may, from time to time, request that the Contractor create one or more specific lessons or other resources created within and for use with Contractor's services (each such lesson or resource being a "District Resource") and, subject to (i) the written agreement between Contractor and the District with regards to the identification and scope of each such District Resource, and (ii) the written consent of Contractor to the creation of each such District Resource, the District shall own and retain all right, title and interest in and to each such District Resource subject to any license terms associated with any content within such District Resource. Contractor's written consent shall not be unreasonably withheld.
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, Contractor 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 the county in which the District's administration office is located, 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 Contractor 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 Contractor'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 Contractor submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
12. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation 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 Agreement 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 in connection with this Agreement.

13. **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 telegram, overnight delivery service, or facsimile transmission, addressed as follows:
- i. 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 next business day following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

DISTRICT

Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519-1397
Attn: Superintendent
Email: sid

CONTRACTOR

Bus. Name: Promethean Inc.
Attn: Legal Dept.
Address: 4550 North Point Pkwy, Suite 370
Alpharetta, GA 30022
Phone: 888-652-2848
Fax: 206-260-2771
Email: legal@prometheanworld.com

14. **Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.
15. **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 Contra Costa County, California.
16. **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.
17. **Equal Employment Opportunity.** It is the policy of the District that, in connection with all work performed under District agreements, there shall be no discrimination against any employee or applicant for employment because of race, color, religious creed, national origin, ancestry, marital status, sex, sexual orientation, age, disability or medical condition and therefore the Contractor agrees to comply with applicable federal and state laws. In addition, the Contractor agrees to require like compliance by all subcontractors employed on the work.
18. **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. The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.
19. **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.
20. **Incorporation of Recitals and Exhibits.** The recitals and exhibits attached hereto are hereby incorporated herein by reference.
21. **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.

22. **Conflicts of Interest.** Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Services under this Agreement. Contractor is aware of *Government Code Section 1090* and the *Political Reform Act* and will disclose any potential conflicts and/or submit a Form 700 as applicable.
23. **AVAILABILITY OF FUNDS; BUDGET AND FISCAL PROVISIONS; TERMINATION IN THE EVENT OF NON-APPROPRIATION:**
- (a) This Agreement is subject to the budget and fiscal policies, regulations and practices of the District, and approval and appropriation of funds for this Agreement.
 - (b) The amount of the District's obligation hereunder shall not at any time exceed the amount herein stated or stated in any approved amendment.
 - (c) If funds are appropriated for only a portion of a fiscal year, this Agreement will terminate, without penalty, at the end of the period for which funds are appropriated. District shall make a good faith effort to provide Contractor with at least thirty (30) days advance notice if adequate funds for this Agreement are not appropriated.
 - (d) Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.
24. **DISALLOWANCE**
- (a) RESERVED.
 - (b) Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal, state or local governmental programs. Contractor acknowledges that this certification of eligibility to receive federal or state funds is a material term of this Agreement.
25. **SUBMITTING FALSE CLAIMS; MONETARY PENALTIES:** Contractor agrees to comply with and is subject to the California False Claims Act (Government Code §§ 12650 *et seq.*), including treble damages and penalties as set forth in the operative statutory provision at the time of any violation.
26. **MANDATED REPORTING OF SUSPECTED CHILD ABUSE OR NEGLECT:** If Contractor will provide services at a school site and works with District students pursuant to this Agreement, Contractor is a mandated reporter of suspected child abuse or neglect under California Penal Code § 11165.7, and Contractor will submit reports of suspected child abuse or neglect to Child Protective Services ("CPS") as required by law. (California Penal Code § 11165.7; California Penal Code §§ 11164 *et seq.*) Contractor shall maintain copies of such reports. Contractor is requested, but is not required, to notify the District school site administrator when a CPS report has been filed.
27. **AUDIT AND INSPECTION OF RECORDS:** Contractor agrees to maintain and to permit the District to audit, examine and make copies of excerpts and transcripts of all records, including without limitation accurate accounting books and records, invoices, documents, reports, payroll and personnel records and other materials and data related to Contractor's performance of this Agreement, whether funded in whole or in part under this Agreement. The Contractor shall maintain such records and data in an accessible location and condition for a period of not less than five (5) years after a final payment under this Agreement or until after final audit has been completed, whichever is later.
28. **ASSIGNMENT:** Contractor understands and agrees that the services to be performed by the Contractor under this Agreement are personal in character and neither this Agreement, nor any duties or obligations hereunder, shall be assigned or delegated by the Contractor without the prior written consent of the District.

29. **COMPLIANCE WITH LAWS AND BOARD POLICIES:** Contractor shall keep itself fully informed of applicable federal, state and local laws, regulations, orders, and District Board Policies and Administrative Regulation affecting the performance of, or necessary to ensure the safe and appropriate performance of this Agreement, and shall at all times comply with such laws, regulations, orders, District Board Policies, and Administrative Regulations as they may be amended from time to time.
30. **USE OF NAME; MARKETING:** Excluding a simple statement or acknowledgement that Contractor has a written agreement with the District, Contractor will not use the name, marks or logos of the District in any planned advertisement, press release, or other planned publicity or marketing materials, in any form or media, without the prior written approval of the District. Notwithstanding the foregoing provisions of this Section, nothing in this Section shall infringe upon the First Amendment rights of either Party.
31. **Required Documents.** Prior to the commencement of the Services, Contractor shall provide to District evidence of the required insurance coverages as set forth above, a W-9 Form, and executed copies of the following Exhibits:
- (a) **Exhibit A** – Description of Services, Timelines, and Partial Payment Schedule
 - (b) **Exhibit B** – Fingerprinting Certification
 - (c) **Exhibit C** – Workers’ Compensation Certification
 - (d) **Exhibit D** – Data Privacy Addendum (if applicable)

The District reserves the right to require the Contractor to provide additional documents that may be necessary or desirable in light of the nature of the Services.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date last written below.

MT. DIABLO UNIFIED SCHOOL DISTRICT

PROMETHEAN INC.

Company/Organization Name or Independent Contractor/Consultant

By: [Signature] 10/31/24
Signature of Principal/Budget Administrator Date

DocuSigned by:
John Daniel Oct 31, 2024 | 2:05 PM PDT
Signature of Contractor/Consultant Date

Title: ADEIAN VARGAS, CBO
Print Name and Title

Title: John Daniel VP and Assistant General Counsel
Print Name and Title

By: _____
Signature of District Administrator (if applicable) Date

Title: _____
Print Name and Title

THIS AGREEMENT IS AUTHORIZED AND APPROVED:

By: _____
Signature of Superintendent or Designee Date

Title: _____
Print Name and Title

AGREEMENT ORIGINATOR. Prior to commencement of the Services, sign and forward completed original contract packet to Purchasing.

By: [Signature] 10/31/24
Originator's Signature Date

I.T. DEPT
Site/Department Originating this Contract

ROBERT S. OXFORD, DIRECTOR OF IT
Print Name of Originator and Title

Billing Address if reimbursed by outside agency—i.e. ASB, PTA, PFC:

EXHIBIT A
DESCRIPTION OF SERVICES, TIMELINES,
AND PARTIAL PAYMENT SCHEDULE (if applicable)
(Note that all payments are generated from an invoice.)

SCOPE/STATEMENT OF SERVICES (the "Services"):

The following Services will be provided to the District pursuant to this Agreement.

Service Offering	Description	Measurement
Onsite training <div style="border: 1px solid black; width: 20px; height: 20px; margin: 5px auto; text-align: center; line-height: 20px;">X</div>	Onsite training is one of the most effective ways to facilitate your District's learning and development goals. Promethean will work with the School District to identify your training needs and tailor a training program to target core competencies that will include a variety of onsite course options	Daily Activity Tracker of any training; Evaluations ~ content and instructor will be evaluated on scale of 0(low)-5(high). Quarterly reports provided reflecting scores.
Webinars <div style="border: 1px solid black; width: 20px; height: 20px; margin: 5px auto; text-align: center; line-height: 20px;">X</div>	Promethean District Education Consultants will develop a schedule of webinar training and offer this method of training for teachers as an option to provide content anytime at any site/any hour. This real-time training option allows for teachers to ask live questions to a District Education Consultant on a variety of topics. All webinars will be recorded and can be stored for viewing at a later date/time. These recordings will create a repository of training teachers can go back and view anytime/anywhere.	Daily Activity Tracker of any training; Virtual trainings will be evaluated based on short survey completed by participants. Quarterly reports provided reflecting scores.
Learn Promethean Video Tutorials <div style="border: 1px solid black; width: 20px; height: 20px; margin: 5px auto; text-align: center; line-height: 20px;">X</div>	Our Promethean Learn website offers teachers short video tutorials on a variety of our solutions. Teachers have the ability to further their instruction by watching short, informative videos to better understand both our hardware and software. Prometheaworld.com/learn	This is a self-paced individualized learning service. Participants can utilize these tutorials as needed to review and enrich.
Learn Promethean <div style="border: 1px solid black; width: 20px; height: 20px; margin: 5px auto; text-align: center; line-height: 20px;">X</div>	An online learning environment that is self-paced. Courses will include: Orientation, beginner courses and best practices/classroom use. All courses are interactive with assessments to measure understanding. Teachers receive badges at the end of each course. Districts can gauge level of skills and progression by having teachers share and display badges. Teachers can log in from school and/or home. Prometheaworld.com/learn	Upon completion of course, participants will receive certificate for record of completion.
Train the Trainer <div style="border: 1px solid black; width: 20px; height: 20px; margin: 5px auto; text-align: center; line-height: 20px;">X</div>	Promethean understands that building capacity is critical to success. For this reason, in addition to the trainings listed here, Promethean provides a variety of train the trainer models. These models focus on building capacity within the district and supporting district chosen representatives to the highest degree. These teachers would be skilled at the highest level on the Promethean solution. Not only on its usage, but on how to effectively implement and re-train others.	Daily Activity Tracker of any trainings; Evaluations ~ content and instructor will be evaluated on scale of 0(low)-5(high). Quarterly reports provided reflecting scores.
In-Class Coaching and Mentoring	Promethean's in-class coaching is job-embedded training that allows teachers to receive training right in their classroom environment by one of the Promethean District Education Consultants. This	Daily Activity Tracker of any trainings. Quarterly reports provided reflecting activity.

Service Offering	Description	Measurement
<div style="border: 1px solid blue; padding: 2px; display: inline-block;">X</div>	gives teachers a chance to observe a trainer in-class working with students and to model best teaching practices with Promethean technology. Job-embedded training and modeling is a critical part of our education training plan.	
District Administration Training <div style="border: 1px solid blue; padding: 2px; display: inline-block;">X</div>	Promethean is dedicated to ensuring success for all schools. To do this, more than teacher focused training is required. For this reason, Promethean will provide district and administration training. These courses will focus on building the district's capacity from the top down, as well as equipping district employees and administration with the knowledge and tools to assist teachers. Promethean is dedicated to ensuring success for all schools. To do this, District Education Consultants will create consumables that are specific to the district needs and wants.	Daily Activity Tracker of any trainings; Evaluations ~ content and instructor will be evaluated on scale of 0(low)-5(high). Quarterly reports provided reflecting scores.
Content Creation <div style="border: 1px solid blue; padding: 2px; display: inline-block;">X</div>	Promethean is dedicated to ensuring success for all schools. To do this, District Education Consultants will create consumables that are specific to the district needs and wants. These materials will used as resources to help implement Promethean hardware and software with existing district solutions.	Daily Activity Tracker of any content created for district. Quarterly reports provided reflecting activity.

During the Term of this Agreement, Promethean will provide the District with one (1) Education Consultant ("Consultant"). The Consultant will perform the Services in a professional and workmanlike manner, consistent with industry standards. The Consultant, and the dates during the Term that the Consultant will perform the Services, are as follows:

Chantel Caldwell: Services commence 18 October 2024 and terminate 18 April 2025.

Promethean reserves the right to replace any Consultant during the Term, subject to the District's written approval. In addition, upon request of the District, Promethean will terminate the Consultant and provide a replacement Consultant to complete the Service term of the replaced Consultant.

FEES FOR SERVICES AND PAYMENT TERMS:

The total fees for the Services for the one (1) Consultant for the Term of the Agreement is \$77,700.00.

Commencing on or about November 18, 2024, Contractor's Distributor shall invoice the District \$12,950.00 per month for six (6) consecutive months.

Payment Terms: the District will receive six (6) consecutive separate monthly invoices from Promethean's Distributor, CDW, each in the amount of \$12,950.00, for the Services. The District shall pay each undisputed CDW invoice within thirty (30) days of receipt of invoice.

ADDITIONAL TERMS AND CONDITIONS:

1. The District shall only require the Consultant to work eight (8) hours per day, five (5) days per week, Monday through Friday, each week provided Consultant shall not be required to perform the Services after 6:00 pm unless expressly authorized in writing by Promethean. The District shall provide the working hours for the Consultant subject to the limits set forth in the preceding sentence. **Attached is copy of the District's 2024-25 calendar, the Consultant is expected to work all days when the District office is open. For every day the Consultant is out, the Contractor shall be tolled.**



2. If the Consultant is required to provide Services in a manner that will bring the Consultant in contact with one or more students, the District represents and warrants that the District shall ensure that a District representative accompanies the Consultant at all times when the Consultant is, or may be, in contact with one or more students in the District. Consultant warrants that at no time, s/he will be with students unsupervised.

3. Unless otherwise agreed in writing by Promethean, during the Term and any subsequent current Term of this Agreement and for a period of six (6) months following the termination or expiration of this Agreement, for any reason whatsoever, the District shall not, either directly or indirectly, whether on the District's own behalf or on behalf of any individual or entity, encourage any Consultant employed by Promethean to terminate their employment with Promethean regardless of whether the employment of any such person is for a determined period of time or is "at-will." If the District desires to directly hire a Consultant after the expiration or termination of this Agreement, the District shall contact Promethean and request waiver of this provision, which may be withheld or waived for any reason at the sole discretion of Promethean.

Protocols:

1. **Invoices must include all of the following: invoice date, Contract Purchase Order #, dates of service, detailed description of service, payment rate, total payment due, remit to address, Consultant name, and contact information.**
2. **Costs:** Must correlate payment to Contractor with provision of Services detailed in Appendix A. The breakdown should list separately and in detail the rates pay, charges and expenses. Indirect fees/charges, fringe benefits, administrative cost, overhead costs and reference to insurance costs are prohibited.
3. **Compensation.** The Contractor's fee set forth in this Agreement shall be full compensation for all of Contractor's Services incurred in its performance of the services set forth in **Exhibit A. The fee is not to exceed amount and is not a guarantee of total payment, as payment is owed only for Services rendered at the monthly rate set forth in this Exhibit A.** All reimbursements for supplies, materials, travel and/or mileage shall not exceed the amount set forth in the Agreement, and shall be listed separately and are subject to approval of the District. The fee shall be paid as indicated and the rate of pay shall not be changed for the Term of the Agreement. For any rates or pricing shall remain fixed for the Term of the Agreement.
4. **Method of Payment:** Contractor shall submit invoices in a format approved by the District. Invoices must include the purchase order number, District site name, name of individual(s) performing duties, date(s) worked, hours worked.. Contractor shall submit invoices to the District via the District's authorized representative referenced in Section 17 (Notices).
 1. Upon receipt and approval of Contractor's invoices, the District agrees to make payments on all undisputed amounts within thirty (30) days of receipt of the invoice.



MT. DIABLO

UNIFIED SCHOOL DISTRICT

2024-2025 INSTRUCTIONAL CALENDAR (REVISED)

Board Approved 4/10/2024

Month	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Month	Sun	Mon	Tue	Wed	Thu	Fri	Sat
July 2024		1	2	3	4	5	6	Jan 2025				1	2	3	4
	7	8	9	10	11	12	13		5	6	7	8	9	10	11
	14	15	16	17	18	19	20		12	13	14	15	16	17	18
	21	22	23	24	25	26	27		19	20	21	22	23	24	25
	28	29	30	31					26	27	28	29	30	31	
							(0)								(19)
Aug 2024					1	2	3	Feb 2025							1
	4	5	6	7	8	9	10		2	3	4	5	6	7	8
	11	12	13	14	15	16	17		9	10	11	12	13	14	15
	18	19	20	21	22	23	24		16	17	18	19	20	21	22
	25	26	27	28	29	30	31		23	24	25	26	27	28	
							(17)								(19)
Sept 2024	1	2	3	4	5	6	7	March 2025							1
	8	9	10	11	12	13	14		2	3	4	5	6	7	8
	15	16	17	18	19	20	21		9	10	11	12	13	14	15
	22	23	24	25	26	27	28		16	17	18	19	20	21	22
	29	30							23	24	25	26	27	28	29
							(20)								(19)
Oct 2024			1	2	3	4	5	April 2025			1	2	3	4	5
	6	7	8	9	10	11	12		6	7	8	9	10	11	12
	13	14	15	16	17	18	19		13	14	15	16	17	18	19
	20	21	22	23	24	25	26		20	21	22	23	24	25	26
	27	28	29	30	31				27	28	29	30			
							(18)								(16)
Nov 2024						1	2	May 2025					1	2	3
	3	4	5	6	7	8	9		4	5	6	7	8	9	10
	10	11	12	13	14	15	16		11	12	13	14	15	16	17
	17	18	19	20	21	22	23		18	19	20	21	22	23	24
	24	25	26	27	28	29	30		25	26	27	28	29	30	31
							(14)								(21)
Dec 2024	1	2	3	4	5	6	7	June 2025	1	2	3	4	5	6	7
	8	9	10	11	12	13	14		8	9	10	11	12	13	14
	15	16	17	18	19	20	21		15	16	17	18	19	20	21
	22	23	24	25	26	27	28		22	23	24	25	26	27	28
	29	30	31						29	30					
							(15)								(2)
T = Work Day, All Teachers			N = New Staff Orientation			L = Legal Holiday			B = Board Holiday			R = School Recess			

July 4: Independence Day	Quarter 1=	41 days	Dec 25: Christmas Holiday
July 31: Title I Academy	Quarter 2=	43 days	Jan 1: New Year's Day
August 1-2: New Staff Orientation	Quarter 3=	47 days	Jan 6: School Resumes
August 5-7: All Teacher In-Service Day- Non Student Day	Quarter 4=	49 days	Jan 20: Martin Luther King Day
August 8: First Student Day			Feb 17: Presidents Day
Sept 2: Labor Day			Feb 21: End of Trimester 2
Sept 16-25: Elem. Min. Days For Parent/Teacher Conferences			Mar 10: All Teacher In-Service Day- Non Student Day
Oct 4: End of 1st Quarter	Semester 1=	84 days	Mar 14: End of 3rd Quarter
October 7th-11th: Fall Recess	Semester 2=	96 days	Mar 31: Cesar Chavez Day
Oct 14: School Resumes			Apr 7-14: Spring Recess
Nov 1: Teacher In Service- Non Student Day		180 days	Apr 15: School Resumes
Nov 1: End of 1st Trimester			Apr 11: Board Holiday
Nov 11: Veterans Day			May 26: Memorial Day
Nov 25-27: School Recess	Trimester 1=	55 days	Jun 3: Last Student Day
Nov 28: Thanksgiving Day	Trimester 2=	62 days	Jun 3: End of 2nd Semester/ 4th Quarter/ 3rd Trimester
Nov 29: Board Holiday	Trimester 3=	63 days	Jun 19: Juneteenth
Dec 2: School Resumes			
Dec 20: End of 1st Semester/End of 2nd Quarter		180 days	
Dec 23- Jan 3: Winter Recess			

EXHIBIT B
FINGERPRINTING AND CRIMINAL BACKGROUND CHECK CERTIFICATION
(Contractor REQUIRED to complete.)

One of the boxes below **must** be checked, and an executed copy of this form must be attached to the Independent Contractor Agreement (“Agreement”). Contractor certifies that:

Contractor’s employees or subcontractors will have CONTACT or interaction with District pupils outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee. *“Contractor certifies that the it has complied with the fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 with respect to all Contractor’s employees, subcontractors, agents, and subcontractors’ employees or agents regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1.*

List or attach, all Employee name(s) that have successfully completed the fingerprinting and criminal background check clearance in accordance with law: _____

--OR--

Contractor’s employees or subcontractors will have NO CONTACT or interaction with District pupils outside of the immediate supervision and control of the pupil’s parent or guardian or a school employee. Accordingly, the fingerprinting and criminal background investigation requirements of *Education Code section 45125.1* shall not apply to Contractor’s services under this Agreement.

WHEN CONTRACTOR PERFORMS A CRIMINAL BACKGROUND CHECK, IT SHALL IMMEDIATELY PROVIDE ANY SUBSEQUENT ARREST AND CONVICTION INFORMATION IT RECEIVES TO ANY LOCAL EDUCATIONAL AGENCY THAT IT IS CONTRACTING WITH PURSUANT TO THE SUBSEQUENT ARREST SERVICE.

Megan’s Law (Sex Offenders). Contractor shall verify and continue to verify that the employees of Contractor that will be on the project site and the employees of the subcontractor(s) that will be on the project site are **not** listed on California’s “Megan’s Law” Website (<http://www.meganslaw.ca.gov/>).

MUST BE COMPLETED BY CONTRACTOR’S AUTHORIZED REPRESENTATIVE:

By signing below I certify under penalty of perjury that the information contained on this certification form and attached employee list(s) is accurate. I understand that it is the Contractor’s sole responsibility to maintain, update, and provide the District with current “Fingerprint and Criminal Background Check Certification,” along with the employee list, throughout the duration of Contractor provided services.

CONTRACTOR

DocuSigned by:

John Daniel

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By: _____

Name: John Daniel

Title: VP and Assistant General Counsel

Date: Oct 31, 2024 | 2:05 PM PDT

WORKERS' COMPENSATION CERTIFICATION

(Contractor *REQUIRED* to complete.)

Labor Code Section 3700 (workers' compensation and insurance) 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, 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 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.

I certify I will comply with all California workers' compensation insurance requirements before commencing the performance of the Services of this Contract.


-OR-

I certify that I am a sole proprietor, have no employees, and am self-insured.

I understand the District will not obtain workers' compensation insurance on my behalf or on behalf of my employees or subcontractors.

MUST BE COMPLETED BY CONTRACTOR'S AUTHORIZED REPRESENTATIVE:

I am a representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Contractor.

CONTRACTOR
 By: 
82D3872257F34D0...

Name: John Daniel

Title: VP and Assistant General Counsel

Date: Oct 31, 2024 | 2:05 PM PDT

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 Contract.

EXHIBIT D**DATA PRIVACY ADDENDUM***(Contractor REQUIRED to Complete; Applicable when AGREEMENT involves access to Pupil/Employee Data.)*

This Data Privacy Addendum (“**Data Privacy Addendum**”) to the Agreement Between Mt. Diablo Unified School District and Independent Contractor (“Independent Contractor Agreement”) is entered into by and between Contractor and Mt. Diablo Unified School District (“**District**”). To the extent that any term or condition set forth in this Addendum conflicts with the Independent Contractor Agreement, the provisions of this Addendum will control.

WHEREAS, in order to provide the services described in the Agreement, the Contractor may receive or create, and the District may provide documents or data related to students (“Student Data”) that are covered by several state and federal privacy laws, including: the *Family Educational Rights and Privacy Act (FERPA)*, the *Children’s Online Privacy Protection Act (COPPA)*, *Education Code section 49073.1*, and the *Student Online Personal Information Protection Act (SOPIPA)*. The District and Contractor desire to ensure compliance with applicable state and federal laws, school policies, procedures and regulations.

NOW, THEREFORE, in consideration of the above premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, the parties hereto agree as follows:

1. **Use.** Contractor shall not use any information in a Student Data¹ for any purpose other than those required or specifically permitted by the Independent Contractor Agreement, and shall comply with all applicable state and federal laws pertaining to Student Data privacy and security. Contractor shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this Data Privacy Addendum. Contractor shall not sell or otherwise derive a benefit from sharing information in a Student Data with a third party. Contractor shall enter into written agreements with all subcontractors performing functions pursuant to the Independent Contractor Agreement, whereby the subcontractors agree to protect Student Data in manner consistent with the terms of this Data Privacy Addendum.
2. **Ownership.** All Student Data obtained by Contractor from District continues to be the property of and under the control of the District. The District retains exclusive control over student and staff data, including determining who may access data and how it may be used for legitimate authorized purposes.
3. **Export.** Contractor shall provide a means by which its employees, when so authorized, can search and export Student Data through reasonable procedures such that the District can respond to a parent, legal guardian or eligible student who seeks to review personally identifiable information on the pupil’s records or correct erroneous information.
4. **Disposition.** The Contractor agrees that upon expiration or termination of services under this Agreement, Contractor shall dispose or delete all Student Data obtained under the Independent Contractor Agreement. Disposition shall include (1) the shredding of any hard copies of any Student Data; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the Independent Contractor Agreement authorizes Contractor to maintain Student Data obtained under the Independent Contractor Agreement beyond the time period reasonably needed to complete the disposition.
5. **Security.** Contractor shall maintain adequate administrative, physical, and technical data security measures, consistent with industry standards and technology best practices, to protect Student Data from unauthorized access, disclosure or acquisition by unauthorized persons, and shall not copy, reproduce or transmit data

¹ “Student Data” includes any information directly related to a pupil that is maintained by the District or acquired directly from the pupil. Pupil Records do not include de-identified information (information that cannot be used to identify an individual pupil) used: (1) to improve educational products for adaptive learning purposes and for customized pupil learning; (2) to demonstrate the effectiveness of the operator’s products in the marketing of those products; or (3) for the development and improvement of educational sites, services, or applications.

obtained pursuant to the Agreement except as necessary to fulfill the purpose of the Agreement. Where applicable, the Contractor will require unique account identifiers, usernames and passwords that must be entered each time a client or user signs on.

- 6. **Prohibited Use.** Contractor shall not use Student Data, or any data derived from Student Data, to perform or deliver targeted advertising to students, and is prohibited from selling or providing Student Data to third parties for any purpose without District’s written consent.
- 7. **Breach Protocol.** Upon becoming aware of any unlawful or unauthorized access to Student Data stored on equipment used by Contractor or in facilities used by Contractor, Contractor will take the following measures:
 - (a) promptly notify the District of the suspected or actual incident within a reasonable amount of time of the incident, not to exceed forty-eight hours, and shall present the information under the following headings: “What Happened,” “What Information was Involved,” “What We are Doing,” “What You Can Do,” and “Persons to Contact for More Information”; and
 - (b) promptly investigate the incident and provide District with detailed information regarding the incident, including the identity of affected users; and
 - (c) assist the District in notifying affected users, affected parents, legal guardians of commercially reasonable steps to mitigate the effects and to minimize any damage resulting from the incident. Upon request from District, Contractor shall notify affected parties or reimburse District for actual costs associated with notifying affected parties.
- 8. **Entire Agreement.** This Data Privacy Addendum constitutes the entire agreement between the Parties with respect to the subject matter herein. It supersedes, and the terms of this Data Privacy Addendum govern, any and all previous oral and written communications between the parties, their Affiliates, and their respective employees and representatives regarding these matters.
- 9. **Successors Bound.** This Data Privacy Addendum is and shall be binding upon the respective successors in interest to Contractor in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

MUST BE COMPLETED BY CONTRACTOR’S AUTHORIZED REPRESENTATIVE:

I am a representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified and am authorized and qualified to execute this Data Privacy Addendum on behalf of Contractor.

CONTRACTOR

DocuSigned by:

John Daniel

By: _____
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Name: John Daniel

Title: VP and Assistant General Counsel

Date: Oct 31, 2024 | 2:05 PM PDT