

**ED TECH JPA PURCHASE AGREEMENT:
RFP No. 20/21-02 Web Design & Hosting**

This Purchase Agreement (this "PA"), is made as of _____ (the "Effective Date"),
by and between the

("PARTICIPANT") and

("VENDOR").

BACKGROUND

A. Education Technology JPA ("ED TECH JPA") is a Joint Powers Authority formed by California public school districts, county offices of education, and community college districts pursuant to California Government Code Sections 6500-6536. ED TECH JPA aggregates purchasing power and expertise for its Associate Members across California.

B. ED TECH JPA establishes its contracts for products and services through the following process:

1. On December 8, 2020 ED TECH JPA issued a Request for Proposal for web design and hosting services (the "RFP") on behalf of ED TECH JPA members. ED TECH JPA invited qualified vendors to submit pricing products and services in response to the RFP.

2. ED TECH JPA published the RFP on its Website and in a local periodical.

3. ED TECH JPA received one or more responses to the RFP. ED TECH JPA evaluated all responses which complied with the terms of the RFP, using the following criteria: Functionality and Usability, Vendor Support and Ability to Perform, Price, and Technology Requirements.

4. ED TECH JPA selected VENDOR for an award under the RFP for Request for Proposal for web design and hosting solutions (the "Products") and thereafter entered into a Master Agreement (MA) to establish the terms by which Associate Members of the ED TECH JPA may purchase products from Vendor. The RFP, Vendor's proposal in response to the RFP, the Master Agreement, and the California Student Data Privacy Agreement are hereby incorporated herein by this reference

C. A California public entity using the ED TECH JPA RFP to buy Products is a "Participant" or "Participating Associate Member".

D. PARTICIPANT has completed its own due diligence regarding the suitability of VENDOR and Products for Participant's needs.

E. The parties are entering this PA to establish the terms and conditions of the purchase by Associate Member pursuant to that Master Agreement.

AGREEMENT

Now, therefore, for good and valuable consideration, the parties agree as follows.

1. PARTICIPATION IN MASTER AGREEMENT

This PA is subject to the terms of the RFP and the corresponding MA between ED TECH JPA and VENDOR, which are incorporated herein by this reference. VENDOR and PARTICIPANT agree (a) to the terms and conditions of the RFP and the MA covering the requested Products, (b) any additions or deletions to Products listed on this PA shall be promptly executed through an amendment to this PA, signed by VENDOR and PARTICIPANT.

VENDOR agrees as follows:

Vendor acknowledges that each PARTICIPANT is responsible for (a) completing their own due diligence regarding the suitability of VENDOR, (b) prior to executing a Purchase Agreement, Associate Members will work with a VENDOR representative to establish an Implementation Plan with the Participating Associate Member, as further described in Section 2.3 of the RFP, and (c) an Associate Member is not bound to a purchase until it has obtained approval from its Board and executed this Purchase Agreement with the VENDOR for the product. VENDOR further acknowledges and agrees (c) by entering into one or more Purchase Agreements with PARTICIPANT, VENDOR is has agreed to the delivery terms for Products as established in the Implementation Plan and VENDOR will faithfully carry out timely implementation of the Products with PARTICIPANT. Order details, including an Additional Services, and the parties' Implementation Plan are attached hereto as Exhibit A.

PARTICIPANT agrees as follows:

PARTICIPANT acknowledges and agrees that (a) it has performed its own due diligence in selecting the VENDOR's Product and its suitability to Participant's needs, including using price as a significant factor, (b) VENDOR has provided a suitable Implementation Plan to Participant outlining all necessary dates and Participant needs, and (c) it will pay the costs as quoted by VENDOR in the RFP and the MA.

2. COMPLIANCE WITH APPLICABLE LAW

VENDOR agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to VENDOR, VENDOR's business, the Products, equipment and personnel engaged in Products covered by this PA or accruing out of the performance of such Products. If VENDOR performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, VENDOR shall bear all costs.

3. DATA PRIVACY

VENDOR agrees that all products and services are fully compliant with all applicable requirements including all state and federal laws. VENDOR has executed the California Student Data Privacy Agreement (CSDPA), attached to the RFP as Appendix E.

4. PERMITS/LICENSES

VENDOR and all VENDOR's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of Products pursuant to this PA.

5. INSURANCE

VENDOR shall insure VENDOR's activities in connection with the Products under this PA and agrees to carry insurance as specified in the RFP to ensure VENDOR's ability to adhere to the indemnification requirements under this PA.

6. PRODUCT ADDITIONS/DELETIONS

VENDOR may add or delete Products introduced or removed from the market by the manufacturer under the following conditions:

- A) Deleted Products has been discontinued and is no longer available from the manufacturer;
- B) Added Products are either a direct replacement for original products listed in the RFP, VENDOR's Proposal, the Master Agreement and/or any Purchase Agreements, or Added Products are enriched capabilities, new modules, technology advancements, and/or service categories within the Education Intelligence and Analytics solution that VENDOR did not have at the time the RFP Proposal was submitted;
- C) VENDOR has obtained prior written Board approval from ED TECH JPA;
- D) VENDOR receives an executed Amendment to the Master Agreement;
- E) VENDOR has obtained prior written Board approval from Participating Associate Members; and
- F) VENDOR receives an executed Amendment to the Purchase Agreement.

7. INVOICING FOR SERVICES

The RFP Number and Name shall appear on each purchase order and invoices for all purchases placed under this Purchase Agreement. Unless otherwise agreed upon by both parties in writing, signing a delivery and acceptance certificate constitutes acceptance of the Products and allows VENDOR to invoice for the Products. ED TECH JPA does not guarantee timely payment. The Purchase Agreement is between VENDOR and PARTICIPANT.

8. CONTRACT MANAGEMENT

- A. The primary VENDOR contract manager for this Purchase Agreement shall be as follows:

Name: Diverse Network Associates, Inc. dba CatapultK12

Attn: Angie Brown

Address: 5098 Foothills Blvd, Ste 3 #396, Roseville, CA 95747

Email: abrown@catapultk12.com

Phone: 888-840-9901 and 916-698-7887

- B. The primary Participant contract manager for this Purchase Agreement shall be as follows:

Name:

Attn:

Address:

Email:

Phone:

C. The primary ED TECH JPA contract manager for this Purchase Agreement shall be as follows:

Education Technology JPA
Attn: Michelle Bennett
5050 Barranca Parkway
Irvine, CA 92604
MichelleBennett@iusd.org
949-936-5022

D. Should the contract administrator information change, the changing party will provide written notice to the affected parties with the updated information no later than ten (10) business days after the change.

9. INDEMNIFICATION

VENDOR will defend, indemnify and hold harmless Participating Associate Members and ED TECH JPA and its directors, officers, employees, and agents from and against all damages, costs (including reasonable attorneys' fees), judgments and other expenses arising out of or on account of any third party claim: (i) alleging that the product infringes or misappropriates the proprietary or intellectual property rights of such third party, except to the extent that such infringement results from (A) PARTICIPANT's misuse of the product, (B) modifications to the product, or (C) PARTICIPANT continuing the allegedly infringing activity after VENDOR has provided PARTICIPANT with modifications that would have avoided the alleged infringement; (ii) that results from the negligence or intentional misconduct of VENDOR or its employees or agents; or (iii) that results from any breach of any of the representations, warranties or covenants contained herein by VENDOR. If the product becomes or, in VENDOR's opinion, is reasonably likely to become the subject of any injunction preventing use as contemplated herein for the reasons stated in this Section 9, VENDOR, or its designee, may, at its option, (i) procure for PARTICIPANT the right to continue using the product, (ii) replace or modify the product so that it becomes non-infringing without substantially compromising its functionality, or, if (i) and (ii) are not reasonably available to VENDOR, then (iii) terminate this Agreement as to the infringing product, require the return of the allegedly infringing product and/or refund to PARTICIPANT a portion of the License Fees paid by PARTICIPANT in respect of the product depreciated on a straight-line basis over one (1) year from the Effective Date. VENDOR agrees to notify ED TECH JPA and Participating Associate Member in the event of any claim against VENDOR alleging intellectual property infringement regarding Products and Services listed in the RFP. VENDOR agrees to notify ED TECH JPA of any claims against VENDOR by any Participating Associate Member.

(b) By PARTICIPANT. To the extent permitted under applicable law, PARTICIPANT agrees to defend, indemnify and hold harmless VENDOR and ED TECH JPA and its directors, officers, employees, and agents from and against all damages, costs (including reasonable attorneys' fees), judgments and other expenses arising out of or on account of any third party claim that results from (i) the negligence or intentional misconduct of PARTICIPANT or its employees or agents or (ii) any breach of any of the representations, warranties or covenants contained herein by PARTICIPANT.

(c) **DISCLAIMER OF LIABILITY.** ED TECH JPA does not provide assurance or warranty to VENDOR or PARTICIPANT with respect to issues arising under this PA, including Participant's payments to VENDOR. ED TECH JPA will not represent VENDOR or PARTICIPANT in the resolution of disputes arising under this PA.

10. ATTORNEYS' FEES

If any action at law or in equity is brought to enforce or interpret the provisions of this PA, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which the party may be entitled.

11. SEVERABILITY

In the event that any provision of this PA is held invalid or unenforceable by a court of competent jurisdiction, no other provision of this PA will be affected by such holding, and all of the remaining provisions of this PA will continue in full force and effect.

12. ASSIGNMENT

Neither party may assign its rights and obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Orders Forms and SOWs), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. An "Affiliate" for purposes of this Section 12 shall mean any entity which directly controls, is under common control with, or is directly or indirectly controlled by the party seeking to assign its rights and obligations hereunder.

13. DEFAULTS

In the event that VENDOR defaults in its obligations under this PA, and if such default is not cured within 30 days after notice of the default from PARTICIPANT to VENDOR, then PARTICIPANT may pursue any available remedies against VENDOR, including but not limited to termination of this PA.

14. GOVERNING LAW AND VENUE

THIS PA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS IN THE COUNTY WHERE PARTICIPANT IS LOCATED FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS PA OR THE TRANSACTIONS CONTEMPLATED HEREBY.

PROVISIONS REQUIRED BY LAW: VENDOR acknowledges that it has conducted and performed the required research to become aware and knowledgeable of all federal, state and local laws/statutes that are referenced herein, may pertain to and/or govern the procurement activities and transactions covered by this PA. These provisions of law and any clause required

by law that is associated with this transaction will be read and enforced as though it were included herein.

15. NOTICES

All notices under this PA must be in writing and will be effective (a) immediately upon delivery in person or by messenger, (b) the next business day after prepaid deposit with a commercial courier or delivery service for next day delivery, (c) upon receipt by facsimile as established by evidence of successful transmission, (d) when emailed to the receiving party at the receiving party's assigned email address with delivery receipt requested, upon electronic confirmation the transmission has been delivered, or (e) five (5) business days after deposit with the US Postal Service, certified mail, return receipt requested, postage prepaid. All notices must be properly addressed to the addresses set forth on the signature page to this PA, or at such other addresses as either party may subsequently designate by notice.

16. COUNTERPARTS

This PA may be signed and delivered in two (2) counterparts, each of which, when so signed and delivered, shall be an original, but such counterparts together shall constitute the one instrument that is the PA, and the PA shall not be binding on any party until all Parties have signed it.

17. AUTHORIZED SIGNATURE

The individual signing this PA warrants that he/she is authorized to do so. The Parties understand and agree that a breach of this warranty shall constitute a breach of the PA and shall entitle the non-breaching party to all appropriate legal and equitable remedies against the breaching party.

18. TERM & TERMINATION

The term of this PA (the "Term") shall commence on the Effective Date and shall expire after a period of _____ years. The parties understand that PARTICIPANTS ordering Products pursuant to the Master Agreement may extend for multiple years after the Term of the Master Agreement. The expiration or termination of the Master Agreement shall not affect VENDOR's obligation to deliver Products as ordered by PARTICIPANTS pursuant to this PA.

TERMINATION OF CONTRACT

Without limiting any rights or remedies which PARTICIPANT may have in the event of any default by VENDOR, PARTICIPANT shall have the right, upon fifteen (15) days' prior written notice to VENDOR, to terminate this PA at any time and without cause prior to complete delivery. Such termination shall be without any obligation or liability to VENDOR other than payment of charges for the value of work performed, and for necessary expenditures which can be established by VENDOR as having been reasonably incurred prior to the time that notice of termination is given. In no event shall the termination charges exceed the purchase price of the equipment/services. In the event of any termination, PARTICIPANT shall be entitled to all materials, work in process, and completed work included as value of work performed and necessary expenditures in determining the charges referred to above and paid by PARTICIPANT. VENDOR agrees to allow mutual contract termination in whole or in part, in the event that PARTICIPANT does not allocate funding for the continuation of this contract or any portion thereof. In the event of termination due to non-allocation of funds, both parties shall be held without fault and there shall be no financial consequences assessed as a penalty on either party.

19. SURVIVAL

The parties' respective obligations under the following sections of this PA shall survive any termination of this PA: Sections 6 through 12, covering Administrative Fee, Indemnification, Attorneys' Fees, Severability, Defaults, Governing Law, and Notices.

20. EXHIBITS

This PA includes all documents referenced herein, whether attached hereto or otherwise incorporated by reference.

21. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE. This Agreement is the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in VENDOR's Proposal, an invoice, or in any other documentation, will be incorporated into or form any part of this Agreement, and all such terms or conditions will be void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) any exhibit, schedule, or addendum to this Agreement and (2) the body of this Agreement.

22. ADDITIONAL INSURED ENDORSEMENT LANGUAGE

Any general liability policy provided by VENDOR hereunder shall contain an endorsement which applies its coverage to PARTICIPANT, members of PARTICIPANTS's board of trustees, and the officers, agents, employees and volunteers of PARTICIPANT, individually and collectively, as additional insureds.

“ _____, its Board of Trustees, officers, agents, employees, and volunteers are named as additionally insured on this policy pursuant to written contract, agreement, or memorandum of understanding. Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory.”

IN WITNESS WHEREOF, the parties have executed this Purchase Agreement as of the Effective Date.

By:
Its:

Date

By:
Its:

Date

Exhibit A

Order Information and Implementation Plan



Appendix D: Supplementary Materials

Service Level and Maintenance Agreement (if applicable)

Sample Reports and Training Materials

- Release Notes
- Training Overview

Additional Resources that Support the Proposal

Service Level Agreement

Catapult K12 is committed to providing you with superior network performance, service and support. Our Service Level Agreement (SLA) provides uptime guarantees. Hardware replacement guarantees are additionally provided for dedicated servers. Any SLA credits are applied as a credit toward future services. Customers currently in arrears or in collections for monthly service payments do not qualify for any SLA credits or claims. Any past service issues or credits in no way affect any current SLA claims.

Network Uptime Guarantee

CATAPULT K12's servers connect to the Internet through redundant high-speed connections on diverse backbones ensuring data delivery to the end user in the fastest, most efficient manner possible.

CATAPULT K12 guarantees a 99.5% network uptime excluding scheduled maintenance and previously notified upgrades. CATAPULT K12's highly qualified network engineers and administrators, guarantee the functioning of all network infrastructures including routers, switches, and cabling 99.5% of the time.

Claims

In the event that there is network outage, CATAPULT K12 will credit the monthly service charge for the following month's service as calculated below and as measured 24 hours a day in a calendar month, with the maximum credit not to exceed 25% of the monthly service charge for the affected month. Network outage means any outage in which end customers are unable to access the customer's site, due to a failure in CATAPULT K12's network. CATAPULT K12 is not responsible for connectivity issues resulting from failure of any other network than one which is solely owned by CATAPULT K12. CATAPULT K12 will ONLY be held responsible for its network and not for general conditions on the Internet. Delays that occur outside CATAPULT K12's routers caused by backbone failures/congestion, interruption of or delay in transportation, unavailability of, interruption or delay in telecommunications, or third party services (including DNS propagation) resulting in degradation of service and high packet loss or similar conditions, cannot be guaranteed by CATAPULT K12. When purchasing services from CATAPULT K12, customer agrees that CATAPULT K12 will not be held responsible for any loss of sales or revenue as a result of network outages or website and server inaccessibility.

CATAPULT K12 will offer Network outage service credits to customers in accordance with the following schedule:

Server Availability

99.5% / Guaranteed

98%-99.4% / 5%

96%-97.99% / 10%

90%-95.99% / 15%

89.99% or below / 25%

1. Additional Changes. Any changes other than those changes allowed in the original assignment, in the structure of format, customization to design, the structure of database, the flow chart, picture(s), text, and any other unexpected modifications will result in additional custom design and/or web programming charges.
2. Website Hosting. All programs, html, graphics, and all other elements pertaining to this project will be hosted on CATAPULT K12 servers. CATAPULT K12 provides its customers a 99.5% uptime guarantee.
3. Website Design & Production. CATAPULT K12 reserves all rights to provided design options and proprietary programming. Time of launch assumes the customer will make all technical and graphic decisions within one (1) business day of submission and promptly provide all requested materials within a week of contract signing. CATAPULT K12 is not responsible for Client provided photos (if copyrighted). Website launches require written approval via email by the customer. All sites designed by CATAPULT K12 will have a "by-line link" at the bottom of the website.
4. Technical Support. Maintenance may include minor fixes (textual changes, programming, HTML, new photos, etc.) Additional hours will be billed at our standard rates. Change requests will normally be completed within two (2) business days of receipt via email to your account manager.
5. Client Acceptance. Client understands all Sales are Final. Setup fees cannot be refunded. Any outstanding balances will be charged 30 days from the date of sale to the credit card on file per Net30 terms of this contract. CATAPULT K12 cannot be responsible for delayed service on completed work due to client delays.
6. Intellectual Property. CATAPULT K12 reserves all rights to all intellectual property under Federal and California laws.
7. Ownership of Final Work Product. Upon completion of the final product, CATAPULT K12 and Client shall both independently share all ownership and intellectual property rights over the finalized object and source code, and the finalized expression of the product, code, and/or website, which includes the look and feel and graphical depiction of the final design as well as the work's final expression in computer code format, unless otherwise agreed to by the Parties in writing.

8. Marketing Services Results. CATAPULT K12 does not guarantee or promise natural search engine rankings. Our services are 100% white hat and fall within the guidelines and standards that the search engines provide to get your site ranked naturally.

9. Software Support. CATAPULT K12 will support bugs that stop the software from functioning at no additional cost. This does not include bugs that are caused by the releases of new browsers or any unforeseen changes in the Internet, new Web Browsers, new security methods, or development standards that CATAPULT K12 is unaware prior to the signing of this contract. CATAPULT K12's support team is available Monday through Friday 8am to 5pm excluding holidays. 24/7 email support is additionally available.

10. Cancellations. Some cancellations may be subject to a cancellation fee. All cancellations must be provided at least 30 days prior to the next billing cycle in writing (email or fax). We do not accept cancellations over the phone.

11. Payments, CATAPULT K12 will charge 50% (non-refundable) of the setup fees before the start of the project and the remaining 50% of the setup after the design aspects have been completed. The monthly billing date starts when the website or program is posted to the World Wide Web. In the event of cancellation or default in payment, the website will be suspended and taken offline. A fee may apply to reinstate website.

Monthly fees will be invoiced 6 months after signing this document or the first of the month following the launch of the website to the World Wide Web. By signing this document, you are agreeing to 12 months of service.

Signed: _____

Name (please print): _____

Title: _____ Date: _____

Please write the full name of the lead contact person on this project: _____