

Agreement #: SW24-0304-25

Board Item No: _____

Board Date: _____

**SOFTWARE LICENSE AGREEMENT
BEWEEN
SAN DIEGO UNIFIED SCHOOL DISTRICT
AND
5 STAR SOLUTIONS, LLC**

This Agreement is entered into by and between the San Diego Unified School District, 4100 Normal Street, San Diego, California 92103, hereinafter referred to as ("District"), and 5 Star Solutions, LLC, a Limited Liability Company, located at 5210 E. Pima St. Suite 200 K, Tucson, AZ 85712 hereinafter referred to as ("Provider").

RECITALS

WHEREAS, Public Contract Code 20118.3 allows school districts to purchase, without taking estimates or advertising for bids, instructional computer software packages; and

WHEREAS, DISTRICT requests to provide a software program solution to allow the District's school sites to track student activities, events, interventions, and attendance through the web, mobile, and barcode scanning technology (see Exhibit A); and

WHEREAS, Provider offers a Student App software tracking attendance for out-of-classroom events/sessions and utilization of resources to provide accurate records.

NOW, THEREFORE, District and Provider agree as follows:

AGREEMENT

1.0 Provider Obligations and Term

1.1 *Provider Software.* Commencing on September 27, 2023 through September 26, 2028.

1.2 *User Support.* Provider will provide District and District User(s) with User Support throughout the Term.

1.3 *Uptime.* Provider will use commercially reasonable efforts to make the Provider Software for access by District Users 98% of the time, measured on a monthly basis, excluding Planned Outages. "Planned Outages" means the installation of upgrades, service packs, routine server, application, or network configuration changes, and other reasonable maintenance activities. Planned Outages will be conducted during off-peak Provider Course utilization times. Provider will provide written notification 7 days in advance of any Planned Outage to the District User.

1.4 *Security.* Provider will implement commercially reasonable security measures to protect against incidents of unauthorized access to personally identifiable District User information.

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- 1.5 ***All Rights Reserved.*** Provider and its suppliers own all right, title and interest in and to the Provider Software. Other than granting District Users the right to access and use the Provider Software as described in this Agreement, Provider expressly reserves all right, title and interest therein.

2.0 District Considerations

- 2.1 ***Hardware/Software.*** The Provider's Software will be made available to District Users over the Internet through a web-browser interface. To access the Provider Software, therefore, District Users must have a suitable Internet connection and access to an appropriately configured computer, as well as an appropriately configured computer network (where applicable).
- 2.2 ***Parental Consent.*** Not Applicable.
- 2.3 ***No Resale Rights.*** District will not resell to any third party the right to access or use the Provider Software or provide any third party who is not a District User with access to, or the ability to use, the Provider Software.
- 2.4 ***Ordering.*** District will submit order per the License Agreement Terms and Conditions, herein attached as Exhibit A of Agreement SW24-0304-25 approved by District Board of Education.

3.0 Payment

- 3.1 ***General.*** In consideration for the rights granted and services provided under this Agreement, District will pay Provider an amount not to exceed Twenty-Eight Dollars and 00/100 (\$ 28,000.00).
- 3.2 ***Payment Terms.*** District will pay all Provider invoices issued under this Agreement within thirty (30) days of the invoice date. Payment will be made by purchase order. No payment will be made unless the District verifies that all products and services for which payment is requested have been fully and satisfactorily performed. Provider will submit to District relevant documentation necessary to substantiate the payment requested. For prompt payment, invoice must reference this Agreement, No. SW24-0304-25 and the District issued purchase order. Invoicing must be accurate in all details, and invoices must be submitted to invoices@sandi.net and:

Susan Barndollar Executive Director
Nursing and Wellness
sbarndollar@sandi.net
(619) 725-5501

- 3.3 ***Taxes.*** Amounts stated under Section 3.1 do not include any applicable sales, use, gross income, occupational, or similar taxes; import or export fees; duties, imports, or tariffs; or any other taxes, duties, charges, or fees of any kind which may be levied in connection with the transactions covered under this Agreement. Any such taxes (if any are due) are the responsibility of District.

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- 3.4 ***Non-Funding.*** Notwithstanding any other provision to the contrary, if for any fiscal year of this Agreement the Board of Education for any reason fails to appropriate or allocate funds for future payments under this Agreement, the District will not be obligated to pay the balance of funds remaining unpaid beyond the fiscal period for which funds have been appropriated and allocated.

4.0 **Confidentiality and Public Disclosure**

- 4.1 ***Confidentiality.*** Each party agrees that during the term of this Agreement, and for two (2) years thereafter, it will not disclose to any third party any Confidential Information of the other party, except to the extent permitted or required by law or as otherwise expressly authorized herein. The term "Confidential Information" will mean all non-public information that either party designates as being confidential, or which, under the circumstances of disclosure ought to be treated as confidential. Provider's Confidential Information includes, without limitation, information relating to unreleased offerings. Confidential Information will not include information that was known to the receiving party prior to the disclosing party's disclosure to the receiving party, or information that becomes publicly available through no fault of the receiving party. Nothing in this Section 4 precludes either party from disclosing Confidential Information when and as permitted by law.

- 4.2 ***Public Disclosure.*** The parties acknowledge that District is subject to certain laws governing the disclosure of public records. The parties also acknowledge that this Agreement includes terms and conditions regarding the business practices of Provider that Provider considers proprietary information. Accordingly, District agrees that it will not disclose the terms of this Agreement to any third party except and only to the extent that District is permitted to do so under applicable public disclosure laws.

5.0 **Representations and Warranties**

- 5.1 ***By Both Parties.*** Each party hereby represents and warrants to the other party that: (a) it has the power and authority to enter into this Agreement and is permitted by applicable law and regulations to enter into this Agreement, and (b) it will comply with all applicable laws in the performance of its obligations under this Agreement, and in particular applicable federal and state regulations regarding student records, student privacy, and the commercial use of student information, including the Family Educational Rights and Privacy Act (FERPA);
- A. No identification for students of their parent(s)/guardian(s) by persons other than representative of Provider and required persons performing activities mandated by the California Department of Education (i.e. auditors) is permitted.
 - B. The individual student data will be destroyed when no longer needed for the purpose(s) for which they were obtained.
 - C. No Access to individual student data will be granted by Provider to any other person, persons, agency or organization without the written consent of the pupil's parent/guardian, except for sharing with to the persons within the District or representatives of Provider, so long as those persons have a legitimate interest in the information.

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D. Provider recognizes and agrees that such access will be extended in reliance on presentations made in their assurance, and that the District will have the right to enforcement of their assurances, or revocation of such access (including return of all physical forms of such data and destruction of all electronic data) immediately upon evidence of noncompliance by Provider. This assurance is binding on Provider and such persons as may be employed by Provider to assist in any plans of the contractual obligation to the District.

5.2 **By Provider.** Provider further represents and warrants that District's and District Users' access to and use of the Provider Software as described in this Agreement will not infringe any third-party copyright.

5.3 **WARRANTY DISCLAIMER.** EXCEPT AS SET FORTH ABOVE, PROVIDER DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, AND DUTIES OF ANY KIND (IF ANY), EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT TO THE PROVIDER SOFTWARE, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE. EXCEPT AS SET FORTH IN SECTION 5.2 THERE IS NO WARRANTY OF NON-INFRINGEMENT OR TITLE.

6.0 Indemnity

6.1 **Duty to Indemnify.** To the fullest extent allowable by law, Provider agrees to defend, indemnify and hold harmless the District, its Board of Education members, officers, agents, employees and directors (hereinafter "Indemnified Parties") from and against any claim, demand, loss or liability (hereinafter "Claim") or any nature or cause whatsoever, and whether actual or alleged, arising from or in any way connected with the performance of this Agreement, including, but not limited to any Claim for personal injury, death, property damage, loss of profits, infringement upon intellectual property rights, or disclosure of confidential information which might be obtained by Provider during performance of this Agreement; except where caused by the sole negligence or willful misconduct of the Indemnified Parties.

If any action or proceeding, whether judicial, administrative, arbitration or otherwise, will be commenced on account of any claim, demand or liability covered by this Agreement, and such action or proceeding names any of the Indemnified Parties as a party thereto, the Provider will, at its sole cost and expense, defend the Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the Indemnified Parties named in such action or proceeding.

In the event that there will be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are bound by, Provider will pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Provider will indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief.

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7.0 EXCLUSIONS OF CERTAIN DAMAGES & LIMITATION ON LIABILITY

7.1 ***EXCLUSION OF CERTAIN DAMAGES.*** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE.

8.0 Termination

8.1 ***Termination.*** The District will have the right to terminate this Agreement and/or any Purchase Order(s) or any part thereof at any time following 30 days written notice.

8.2 ***Termination for Convenience.*** The terms of this subparagraph will not limit or affect the right of the District to cancel /terminate this Agreement and/or any Purchase Orders for Cause and will not apply to a breach of contract. In case of termination by District of all or any part of this Agreement and/or any Purchase Order(s) without cause. Provider will submit all claims for amount due from the District within thirty (30) days after the effective date of cancellation/termination. Provider will maintain complete and accurate records to support Providers costs. Such records will be available for verification through audit and analysis by the District. The District's maximum liability will be limited to the following:

- A. In no event will Provider be entitled to any amount above monies paid and/or owed for licenses issued up to the date of the termination notice.
- B. Provider will have no claim for any damages, or loss of profit, arising out of any termination for convenience.

8.3 ***Termination for Default.*** The District may by written notice to Provider, without prejudice to any other rights or remedies provided under this Agreement, by law or in equity, terminate this Agreement and/or any Purchase Order(s) in whole or in part for any of the following circumstances:

- A. If Provider has been declared bankrupt, makes an assignment for the benefit of creditors, or is in receivership; or
- B. If Provider: 1) fails to perform any of the other terms of this Agreement; or 2) fails to make progress as to endanger the performance of this contract in accordance with its terms, cure or such failure within a period of ten (10) calendar days after receipt of notice from the District specifying such failure.

In the event the District terminates this Agreement in whole or in part, the District may procure, upon such terms and in such manner as it may deem appropriate, services similar to those so terminated, and Provider will be liable to the District for any excess costs, reasonably incurred for such similar supplies or services. District will be entitled to a pro-rata reimbursement if District shall terminate Agreement for Default.

9.0 Insurance

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- 9.1 ***Workers' Compensation.*** Provider shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Provider. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Provider may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the District's Risk Manager. The insurer, if insurance is provided, or the Provider, if a program of self-insurance is provided, shall waive all rights of subrogation against the District and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement. A waiver of subrogation endorsement in favor of the District must be provided.
- 9.2 ***Commercial General Liability*** (including operations, products, and completed operations) \$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury and property damage. If insurance is written on a claim made policy, tail coverage for the duration of the Agreement must be provided. Such coverage shall be retroactive to on or before the Effective Date of this Agreement. Provider shall list District as additional insured on policy and an additional insured endorsement must be provided.
- 9.3 ***Minimum Scope of Coverage.*** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 or GL0002 (most recent editions) covering General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 8 and 9. No endorsement shall be attached limiting the coverage.
- 9.3.1 ***Additional requirements.*** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy.
- 9.3.1.1 The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- 9.3.1.2 Any failure of Provider to comply with reporting provisions of the policy shall not affect coverage provided to District and its officers, employees, agents, and volunteers.
- 9.4 ***Professional Liability Insurance.***
- 9.4.1 ***General requirements.*** Provider, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim and, as provided for herein, and must be disclosed to and approved by District.

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9.4.2 *Claims-made limitations.* The following provisions shall apply if the professional liability coverage is written on a claims-made form:

9.4.2.1 The retroactive date of the policy must be shown and must be on or before the Effective Date of the Agreement.

9.4.2.2 Insurance must be maintained, and evidence of insurance must be provided for at least five years after completion of the Agreement or the work.

9.4.2.3 If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Provider must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The District shall have the right to exercise, at the Provider's sole expense, any extended reporting provisions of the policy, if the Provider cancels or does not renew the coverage.

9.4.2.4 A copy of the claim reporting requirements must be submitted to the District prior to the commencement of any work under this Agreement.

9.5 *Cyber Risk//Cloud Coverage.* Subject to the limit of \$2,000,000 per claim to be maintained for the duration of the agreement/contract and three years following its termination, to respond to privacy and network security liability claims including but not limited to:

9.5.1 Liability arising from theft, dissemination, and/or use of District confidential information including, but not limited to, bank, credit card account, and personally identifiable information such as name, address, social security numbers, student records, etc., regardless of how the information is stored or transmitted.

9.5.2 Network security liability arising from (i) the unauthorized access to, use of or tampering with computer systems, including hacker attacks; or (ii) the inability of an authorized third party to gain access to supplier systems and/or District data, including denial of service, unless caused by a mechanical or electrical failure.

9.5.3 Liability arising from the introduction of a computer virus into, or otherwise causing damage to, an employee's or third person's computer, computer system, network, or similar computer-related property and the data, software and programs thereon.

9.5.4 Crisis-management expenses (i.e., notification, public relations, reputation damage, forensics, etc.) for a data breach.

9.6 *All Policies Requirements.*

9.6.1 *Acceptability of insurers.* All required coverages must be provided by insurers licensed to conduct business in the State of California and rated "A-, VII" or better by the current Best's Key Rating Guide. Non-admitted carriers must be included on

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the most recent California List of Accepted Surplus Lines Insurers (LASLI list) and otherwise satisfy all rating requirements.

- 9.6.2 *Verification of Coverage.*** Certificates of Insurance shall be filed with the District's Strategic Sourcing and Contracts Department. The District reserves the right to require complete copies of all required insurance policies at any time. Provider shall provide, upon District request, complete copies of all policies delivered to Provider by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the District does not receive the required insurance documents prior to the Provider beginning services, it shall not waive the Provider's obligation to provide them.

Include the Contract # on all Certificates of Insurance, Exhibit B.

- 9.6.3 *Notice of Reduction in or Cancellation of Coverage.*** Certificates of Insurance shall include the following clause: **"This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the San Diego Unified School District in accordance with California Insurance Code sections 675-679.7."** Certificates of Insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, expiration date, and the cancellation and reduction notice.

- 9.6.4 *Additional insured; primary insurance.*** District and its officers, employees, agents, and volunteers shall be covered as additional named insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Provider, including the insured's general supervision of Provider; products and completed operations of Provider, as applicable; premises owned, occupied, or used by Provider; and automobiles owned, leased, or used by the Provider in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to District or its officers, employees, agents, or volunteers. A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to the District and its officers, officials, employees, and volunteers, and that no insurance or self-insurance maintained by the District shall be called upon to contribute to a loss under the coverage.

- 9.6.5 *Deductibles and Self-Insured Retentions.*** Provider shall disclose to and obtain the approval of District for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Provider may increase such deductibles or self-insured retentions with respect to District, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Provider procure

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a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

9.6.6 Variation. The District may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that the District's interests are otherwise fully protected.

9.6.7 Remedies. In addition to any other remedies District may have if Provider fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option exercise any of the following remedies, which are alternatives to other remedies District may have and are not the exclusive remedy for Provider's breach: Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; Order Provider to stop work under this Agreement or withhold any payment that becomes due to Provider hereunder, or both stop work and withhold any payment, until Provider demonstrates compliance with the requirements hereof; and/or Terminate this Agreement.

10.0 Miscellaneous

10.1 Relationship of parties. District and Provider are independent with respect to one another, and nothing in this Agreement will be interpreted to create any agency, joint venture, employment, or partnership relationship.

10.2 Force Majeure. For a reasonable time period, Provider will be excused from delay, breach of this Agreement or failure in performance under this Agreement due to causes beyond Provider's reasonable control including without limitation, acts of God, government action, strikes, acts of public enemies, civil disturbance or riots, war, national emergency, floods, power outages, telecommunications failures, fires, earthquakes, storms or other similar causes.


10.3 Notices. Any notices given under this Agreement will be delivered either by messenger or overnight delivery service or sent by facsimile with a confirmation sent via certified or registered mail, postage prepaid and return receipt requested, and will be deemed to have been given on the day when received by the party to whom the notice is given.

PROVIDER: Brian Bourgeois Managing Member 5210 E. Pima St. Suite 200 K Tucson AZ 85712 info@5starstudents.com Ph: 800-321-0931	DISTRICT: Linda Hippe Director, Purchasing and Contracts 2351 Cardinal Lane, Building M San Diego, CA 92123 executedcontracts@sandi.net Ph:858.522.5808
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- 10.4 **Assignment.** Neither party will assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party. Notwithstanding the immediately preceding sentence, either party may assign this Agreement without the other party's prior written consent as part of a merger, acquisition or a sale or transfer of a majority of the assigning party's assets. This Agreement will be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and permitted assignees.
- 10.5 **Waiver/Severability.** No provision of this Agreement will be deemed waived unless the waiver is in writing and signed by the waiving party, and no such waiver will constitute a waiver of any other provision(s) or of the same provision on another occasion. If any term of this Agreement is found by a court of competent jurisdiction to be in whole or in part unenforceable, then such unenforceable term or portion thereof will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the allocation of risk among the parties reflected in the original provision, and the remainder of this Agreement will continue in effect.
- 10.6 **Fingerprint Clearance.** Provider agrees to comply with Fingerprint clearance and TB testing requirements if District desires to have Provider provide on-site professional development. District has determined under Education Code section 45125.1, subdivision (c), that in performing services pursuant to this Agreement, Provider may have contact with pupils. As required under Education Code section 45125.1, subdivision (a), Provider will require those employees who may have contact with pupils to submit its fingerprints in a manner authorized by the Department of Justice (DOJ) together with a fee determined by the DOJ in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code section 45125.1.
- Provider will certify in writing that all of its employees who may have contact with pupils have not been convicted of any serious or violent felonies (as defined in Education Code section 45122.1) or is awaiting adjudication of same. This certification will be provided to school site prior to any of Provider's employees visiting any District site.
- 10.7 **Governing Law.** This Agreement will be governed by and construed under the laws of the State of California without regard to its conflict of laws provisions. Venue will be in a court of competent jurisdiction located in San Diego, California.
- 10.8 **No Third-Party Beneficiaries.** This Agreement is for the benefit of, and will be enforceable by, the parties only. This Agreement is not intended to confer any right or benefit on any third party. No action may be commenced or prosecuted against a party by any third party claiming as a third-party beneficiary of this Agreement.
- 10.9 **Electronic Signature.** Provider consents to conducting transactions for this Agreement via electronic signature, which will have the same validity and effect as a signature affixed by hand, through an electronic system established and maintained by the District.
-  (Initials).

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- 10.9.1 Under the Uniform Electronic Transactions Act (California Civil Code sections 1633.1-1633.17), Provider agrees to conduct transactions relating to the Agreement by use of an electronic signature, which is an electronic mark that is held to the same standard as a legally binding equivalent of my handwritten signature. Provider further agrees that, for the purposes of authorizing, approving, and authenticating records, information, and transactions relating to the Contract, the electronic signature has the full force and effect of a signature affixed by hand to a paper document. Provider agrees that the transactions conducted electronically relating to this Agreement shall be binding upon me.
- 10.9.2 Provider agrees that the electronic signature will be valid from date of issuance until the end of the Agreement term or earlier if it is revoked or terminated under this Agreement. Provider understands that the District may suspend, terminate, or revoke the electronic signature in its reasonable discretion.
- 10.9.3 Provider will use the electronic signature to establish identity and sign electronic documents and forms relating to the Agreement and Amendments. Provider is solely responsible for protecting the electronic signature. If Provider suspects or discovers that the electronic signature has been stolen, lost, used by an unauthorized party, or otherwise compromised, then Provider will immediately notify the Strategic Sourcing and Contracts Officer or his/her designee and request that the electronic signature be revoked. Provider will then immediately cease all use of the electronic signature. Provider agrees to keep the electronic signature secret and secure by taking reasonable security measures to prevent it from being lost, modified, or otherwise compromised, and to prevent unauthorized disclosure of, access to, or use of it or of any media on which information about it is stored.
- 10.10 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, oral or written. Changes, modifications or waivers to this Agreement must be in writing and signed by both parties. The terms and conditions in this Agreement shall supersede any conflicting terms and conditions set-forth in Provider's License Agreement (Exhibit N/A).
- 10.11 **Amendment.** The Parties may amend this Agreement only by a writing signed by all the Parties and approved by District's governing board.
- 10.12 **Exhibits.** This Agreement includes the following exhibits, all of which are incorporated into the Agreement as if fully set forth herein:
- Exhibit A: Scope of Work
Exhibit B: Insurance Certificate
Exhibit N/A Provider's License Agreement

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IN WITNESS WHEREOF, Provider and District agree to the terms and conditions set forth in this Agreement.

This Agreement is signed below by the duly authorized representatives of the parties.

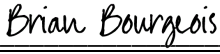


PROVIDER	SAN DIEGO UNIFIED SCHOOL DISTRICT
By: <u></u> <small>DocuSigned by: Brian Bourgeois</small> <small>BC060132B00A47C...</small>	By: _____
Brian Bourgeois Managing Member 5210 E. Pima St. Suite 200 K Tucson AZ 85712 Tel: 800-321-0931 Email: info@5starstudents.com	Linda Hippe Director, Purchasing and Contracts 2351 Cardinal Lane, Building M San Diego, California 92123 Tel: 858-522-5808 Email: executedcontracts@sandi.net
Date: <u>September 7, 2023</u>	Date: _____
APPROVED AS TO FORM AND LEGALITY	Approved in a public meeting of the Board of Education of the San Diego Unified School District on
By: <u></u> <small>DocuSigned by: Andra Greene</small> <small>F4260D6FC7D1479...</small>	By: _____
Andra Greene, General Counsel Office of General Counsel San Diego Unified School District	Marty Stultz, Board Action Officer San Diego Unified School District Board of Education
Date: <u>September 7, 2023</u>	Date: _____
APPROVED TO CONTENT	
By: <u></u> <small>DocuSigned by: Susan Barndollar</small> <small>3483FA48067246B...</small>	
Susan Barndollar, Executive Director Nursing and Wellness San Diego Unified School District	
Date: <u>September 7, 2023</u>	

EXHIBIT A
5-STAR STUDENTS
SCOPE OF WORK

5 Star Students Solutions LLC ("Provider") will provide a software program to allow the District's school sites to track student activities, events, and interventions through the web, mobile, and barcode scanning technology. The software will track attendance for out-of-classroom events/sessions and utilization of resources to provide accurate records.

Definitions:

Wellness Center: Is defined as a center located in all approved District schools and staffed by a District employee (Wellness Center Coordinator). Wellness Center Coordinators increase student awareness and access to student support services, promote self-agency, and bridge services in collaboration with community partners and District services.

Student Data: Is defined as any information (in any format) that is directly related to any identifiable current or former student that is maintained by a District school site and may include "educational records" as defined by the Family Educational Rights and Privacy Act (FERPA). If Provider requires access to student data to provide its services to District's school site, then all student information remains the property of District.

Student App: Is defined as a free mobile application for students and staff. The student app includes virtual IDs with a photo, barcode and badges. App users can view school news, activities, events and interventions. The student app allows access to view and issue hall passes via selection or scanning. The student app allows self-check in to events and interventions via QR code or check-in code. The student app will provide access to eligible surveys and voting polls.

Positive Behavioral Interventions and Supports (PBIS): Is defined as a framework for supporting whole school practices (district-wide) to promote a safe school setting by support Positive Behavioral Interventions and Supports (PBIS) is a framework for supporting whole school practices (schoolwide) to promote a safe school setting by supporting social, learning, behavioral, and emotional needs of all students both with and without individualized education programs (IEPs)ting social, learning, behavioral, and emotional needs of all students both with and without individualized education programs (IEPs).

Comma Separated Values (CSV): Is defined as files stored with tabular data in plain text, where each line of the file typically represents one (1) data record.

1. Services:

- a. This program will track students' behavior occurrences as part of PBIS programs or other initiatives.
- b. Schools will use this program to check-in students during emergencies or drills.
 - i. Provider's tracking program provides students with surveys and voting capabilities, as well as a student mobile app.
 - ii. Provider's surveys can be used for collecting information about student interests, getting feedback for events, or custom health checks.
 - iii. Provider's student mobile app can be used for check-in and distributing surveys and voting polls.
 - iv. Provider shall provide the schools with a variety of student data at an individual or group level.
- c. The items contained below enable the school sites to track activities, events, behaviors, and interventions, as provided below:

Item	Description	Example	Significance
Activities	Activities are year-long organizations that the students participate.	A few examples are sports teams, performing arts groups, and clubs.	By tracking team and club rosters, the school sites can view all participation data. School sites can run cross-comparison reports with discipline, grades, or other student assessment factors.
Events	Events can be on a one-time or repeated basis that the students participate.	A few examples of one-time events are school dances or life-skills education presentations. Club meetings would be considered repeated events.	By tracking student attendance can help school sites identify when they are coming to school events and when they are not. This data can also assist with planning for future events.
Behaviors	Behaviors are positive actions performed by students.	A few examples of behaviors and positive actions are trash clean-up, respect, and random acts of kindness.	By tracking students' positive behavioral occurrences is a direct source of data for this PBIS program.
Interventions	Interventions for academic or social-emotional events that students attend.	A few examples of student interventions are academic or social-emotional events includes, tutoring, study hall, life-skills workshops, wellness center and/or health office check-ins, or library check-in.	By tracking the student's intervention attendance or social-emotional events, can help the school sites manage a study hall period, plan tutoring sessions, and conduct individual student outreach to provide additional resources.

- d. Provider shall provide the software program to all approved school sites for tracking activities, events, behaviors and interventions using the web, mobile app, and barcode scanning technologies. District school sites will have data access for student involvement on an individual and group level basis. In addition, Provider shall assist the District school sites in keeping their staff and student body safe.
- i. Tracking: Designated individuals can check-in students to activities, events, and interventions and track the students' positive behavior occurrences using a mobile barcode scanner, a mobile device, or a computer. Students can also self-check in via student app using a QR code.
 - ii. Reports and Data Analysis - Detailed reports can be exported into many different formats, such as Microsoft Excel, CSV and PDFs. District school sites will have access to built-in metrics for activities, events, behaviors to perform advanced data analysis, comparing involvement data to students Grade Point Average, absences and other profile fields.
 - iii. Safety Features to include:
 - 1) Hall passes: School site staff can scan a student's ID card or manually input the data using their mobile device or computer to assign an out-of-class hall pass and then reassign the student back-in to the classroom. The log will activate and inactivate the students passes, which includes the date/time, and the user who assigned the pass. School site staff users can run reports by individual pass type, and/or by date range.

If District's school staff uses the student app, then there is an option to display active "hall passes" on the student's phone.

- 2) No Privileges List: Provider's student app will help school sites run events more efficiently and provide administrators with the ability to manage the student's "No-Go" list to include the reason and expiration date. The program relies on the students' ID numbers for the "No Go" privilege flag to connect directly to the barcode. The barcode will contain the health and safety reasons, or disciplinary actions, and a warning will appear when the student's barcode is scanned at an event or during a health check-in.
- 3) Emergency Check-in: The emergency check-in feature allows administrators and teachers to check-in students during an emergency or drill. This feature is available through the website and the Provider's Students Manager App. The District students can indicate their location, any notes, and their status (safe or need help) when a student's barcode is scanned during a check-in. School site administrators can access the checked-in list of any unknown (missing) students information from a computer or mobile device.

e. Service locations:

- i. This service may be offered for all approved school sites.

2. Pricing:

- a. District school sites are responsible for the cost of this service. The cost per site is \$5,600.00 annually. The maximum total-not-to-exceed amount for the term of this Agreement is: \$28,000.00.

3. Provider's Responsibilities:

- a. Provider shall provide the following trainings:
 - i. Online Trainings: Provide three (3) hours of live, personalized training with Provider's expert for up to six (6) attendees, using a web-based conferencing platform.
 - ii. Refresher Trainings: Provide two (2) hours of live, personalized training with Provider's expert for up to six (6) attendees using a web-based conferencing platform.
- b. Provider shall provide District school sites with reasonable technical support services in accordance with Provider's standard practices. This technical support service includes text and video documentation, daily email support, online chat services and phone support within one (1) business day.
- c. Provider shall continually update its services to offer the best possible product.
- d. Provider shall maintain strict administrative, technical, and physical procedures to protect information stored on hosted servers. Provider shall use industry standard Secure Socket Layer (SSL) encryption technology to safeguard account registration processes for access to services.
- e. Provider shall provide notification if services are ever compromised by an unauthorized individual as soon as administratively possible.
- f. Provider shall consider the District school site student data as confidential and shall not knowingly share it with any third parties other than as described in Section 3.6 and in Company' Privacy Policy located at <http://5starstudents.com/privacy>
- g. Provider shall not use student data to engage in targeted advertising.

- h. Provider shall collaborate with District's IT Department to set up access and sharing filters to perform services.

4. District Responsibilities:

- a. District's school site administrators will identify an administrative user for its school's management account.
- b. District's school site administrative users will enable the Google Single Sign-In Option (SSO) for Provider's staff users.
- c. District's school site administrative users will assign specific levels of access to each user.
- d. District's school site administrative users will be responsible for interactions to the services with other users.
- e. District's school site administrative users acknowledge that the District school sites will receive parental/guardian consents, for Provider to receive student data related to their children under the age of 13 years.
- f. District's school side administrative users will ensure the District's IT team will whitelist the Providers student domain and/or sending IP addresses to allow links from Providers custom link tracking domain. Provider's program will send emails to users (i.e., staff members) or students.

5. Referral Process:

Not applicable to this scope of work.

6. Schedule of Events/Milestones:

Not applicable to this scope of work

7. Evaluative Criteria:

Not applicable for this scope of work.

***** END OF SCOPE OF WORK *****



CERTIFICATE OF LIABILITY INSURANCE

Exhibit B

DATE (MM/DD/YYYY)

09/06/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER INSZONE INSURANCE SERVICES LLC 57129672 2721 CITRUS RD SUITE A RANCHO CORDOVA CA 95742	CONTACT NAME:	
	PHONE (877) 308-9663 (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC#	
INSURED 5 STAR STUDENTS SOLUTIONS LLCDBA5-STAR STUDENTS 5210 E PIMA ST STE 200 K TUCSON AZ 85712	INSURER A : Sentinel Insurance Company Ltd. 11000	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/Y YY)	LIMITS	
A	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> General Liability	X	X	57 SBM BO9409	01/01/2023	01/01/2024	EACH OCCURRENCE	\$2,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence)						\$1,000,000	
	MED EXP (Any one person)						\$10,000	
	PERSONAL & ADV INJURY						\$2,000,000	
	GENERAL AGGREGATE						\$4,000,000	
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:						PRODUCTS - COMP/OP AGG	\$4,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	
	<input type="checkbox"/> BODILY INJURY (Per person) <input type="checkbox"/> BODILY INJURY (Per accident) <input type="checkbox"/> PROPERTY DAMAGE (Per accident)							
	UMBRELLA LIAB EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE	
	<input type="checkbox"/> AGGREGATE							
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE	OTH-ER
	Y/N						E.L. EACH ACCIDENT	\$100,000
	N/A						E.L. DISEASE - EA EMPLOYEE	\$100,000
							E.L. DISEASE - POLICY LIMIT	\$500,000
A	DATA BREACH - BUS INC & EX EXP			57 SBM BO9409	01/01/2023	01/01/2024	Limit	\$10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Those usual to the Insured's Operations.

CERTIFICATE HOLDER

San Diego Unified School District
 4100 NORMAL ST
 SAN DIEGO CA 92103-2653

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Suean L. Castaneda

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**ADDITIONAL REMARKS SCHEDULE**Page 2 of 2

AGENCY INSZONE INSURANCE SERVICES LLC		NAMED INSURED 5 STAR STUDENTS SOLUTIONS LLCDBA5-STAR STUDENTS 5210 E PIMA ST STE 200 K TUCSON AZ 85712
POLICY NUMBER SEE ACORD 25		
CARRIER SEE ACORD 25	NAIC CODE	EFFECTIVE DATE: SEE ACORD 25

ADDITIONAL REMARKS**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM****FORM NUMBER:** ACORD 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Notice of Cancellation will be provided in accordance with Form SS1223, attached to this policy. Coverage is primary and noncontributory per the Business Liability Coverage Form SS0008, attached to this policy. Waiver of Subrogation applies in favor of the Certificate Holder per the Business Liability Coverage Form SS0008, attached to this policy. Certificate holder is an additional insured per the Business Liability Coverage Form SS0008, attached to this policy.

This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the San Diego Unified School District in accordance with California Insurance Code sections 675-679.7.

In Process



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/5/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Orange Insurance, LLC Ron Sievers 8057 14th Ave. NW Seattle, WA. 98117	CONTACT NAME: Ron Sievers PHONE (A/C, No. Ext): 206.774.7867 E-MAIL ADDRESS: info@orangeinsurance.com		FAX (A/C, No):
	INSURER(S) AFFORDING COVERAGE INSURER A : Beazley - Syndicate 2623/623 at Lloyd's		NAIC #
INSURED 5 Star Students Solutions LLC 5210 E. Pima St. Suite 200 K Tucson, AZ 85712	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		
	INSURER F :		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	Professional - Tech & Media Professional Services <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Retro 5/01/2017 GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	<input checked="" type="checkbox"/>	<input type="checkbox"/>	W1E88E230701	05/01/2023	05/01/2024	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	<input type="checkbox"/>	<input type="checkbox"/>				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	<input type="checkbox"/>	<input type="checkbox"/>				EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		<input type="checkbox"/>	<input type="checkbox"/>				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

San Diego Unified School District, its officers, officials, employees, and volunteers are named as an Additional Insured for Cyber Liability Insurance per attached form # F00730

This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the San Diego Unified School District in accordance with California Insurance Code sections 675-679.7

CERTIFICATE HOLDER

CANCELLATION

San Diego Unified School District
 4100 Normal Street
 San Diego, CA 92103

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE