

## MASTER SERVICES AGREEMENT

Mesa provides audit services relating to student schedules and graduation requirements (collectively, the “**Services**”) as more particularly described in Exhibit A.

Client has determined that the Services are in support of its educational objectives and wishes to engage Mesa as an independent contractor to provide the Services, and Mesa wishes to provide Services, subject to, and in accordance with, the terms and conditions of this Agreement,

**NOW THEREFORE**, in consideration of the above recitals and the mutual promises and benefits contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. ENGAGEMENT

1.1. Client hereby engages Mesa as an independent contractor, and Mesa accepts such engagement, to provide the Services in accordance with the terms and conditions of this Agreement. Any such Services may be provided by employees or contractors of Mesa.

1.2 Client’s obligations and responsibilities under this Agreement and to Mesa are set forth on Exhibit C.

1.3 Mesa shall comply with, and the Services shall be subject to, the rules and regulatory requirements set forth on Exhibit D.

1.4 Mesa shall do a criminal background check and any other background check required by Client on all employees that may have any direct contact with any of Client’s students or any other person under the age of 18.

### 2. COMPENSATION

2.1. Client shall pay Mesa the fees for the Services as set forth on Exhibit B (as modified from time to time, the “**Services Fees**”).

2.2. Undisputed Services Fee shall be paid no later than thirty (30) days after receipt of Mesa’s invoice. The parties shall resolve any disputes in good faith as quickly as possible.

2.3. Mesa shall be solely responsible and liable for all expenses and any other costs arising from or relating to the Services and/or this Agreement unless otherwise agreed by the parties.

### 3. SOFTWARE

1. (a) Subject to the terms of this Agreement, Mesa grants to Client a limited, non-exclusive, non-transferable and royalty-free right to access and use the software in connection with the Services (as modified from time to time, the “**Platform Software**”).

2. (b) The Platform Software, documentation and the associated copyrights and other intellectual property rights are protected by law and international treaties. The limited right to access and use the Software confers no ownership rights to Client and is not a sale of any rights in the Platform Software. Client does not acquire any

rights, express or implied, in the Platform Software, other than those rights specified in this Section 3.

3. (c) Client (and its employees and contractors) shall not:

- copy, modify, adapt, translate create derivative works or improvements of the Platform Software or the documents;
- translate, reverse engineer, de-compile or disassemble the Platform Software, except to the extent that applicable law explicitly prohibits this contractual restriction;
- access or use the Platform Software in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property rights or other rights of any third party, or that violates any applicable law;

(d) Mesa may develop additional “Beta” software in conjunction with services to the client and client may have the use of a “Beta” version of such software at a free or reduced rate. Although Client may have provided feedback as to the “Beta” software, such “Beta” software shall remain the sole intellectual property of Mesa and Client shall have no ownership rights in such software.

#### 4. ADDITIONAL SERVICES

If Client wishes to have Mesa provide any additional development or other services, such services will be reflected on a separate statement of work. The statement of work will describe the terms and conditions for these services, including the scope of work and the fees to be paid. If a new software use or program is developed, Mesa shall retain ownership of any and all intellectual property rights to such new software or program.

#### 5. CONFIDENTIALITY; CLIENT AND STUDENT DATA

5.1. Each party (“**Receiving Party**”) acknowledges that during the Term of this Agreement, Receiving Party may develop or learn information (“**Confidential Information**”) that is confidential and proprietary to the other party, its vendors or its customers (“**Disclosing Party**”). Receiving Party agrees not to disclose such Confidential Information to any third party or otherwise to use such Confidential Information, directly or indirectly, except in connection with the performance of the Services, without the prior written consent of Disclosing Party. Notwithstanding the foregoing, Receiving Party may disclose the Confidential Information to its employees and contractors who have a need to know in connection with the performance of the Services and who are subject to terms of confidentiality no less restrictive than set forth in this Section 5; provided that Receiving Party shall be liable for the breach of the terms of this Section 5 by any of its employees and contractors. Receiving Party shall maintain the confidentiality of the Confidential Information with at least the same degree of care that it uses to protect its own most highly confidential information, but in any event shall use at least commercially reasonable measures to protect the confidentiality of and avoid disclosure of the Confidential Information.

5.2. Disclosing Party shall not disclose to Receiving Party any confidential or proprietary information of any third party without the prior written consent of such third party.

5.3 All Client and student data will be treated in accordance with the data sharing agreement (or its equivalent) attached hereto as Exhibit E (the “**Data Sharing Agreement**”).

#### 6. REPRESENTATIONS AND WARRANTIES

6.1. Mesa hereby represents and warrants to Client as follows:

6.1.1. Mesa has the authority to enter into this Agreement and that this Agreement constitutes its legal, valid, binding and enforceable agreement;

6.1.2. The Services shall be performed in accordance with good industry standards;

6.1.3. Execution and performance of this Agreement (a) do not breach any agreement of Mesa with any third party, or any duty arising in law or equity, (b) do not violate any law, rule or regulation applicable to it and (c) are within its powers;

6.1.4. Mesa (a) is in the business of providing similar services to meet the requirements of its clients and (b) has substantial expertise in the performance of the Services.

6.2. Client hereby represents and warrants to Mesa as follows:

6.2.1. Client has the authority to enter into this Agreement and that this Agreement constitutes its legal, valid, binding and enforceable agreement;

6.2.2. Execution and performance of this Agreement (a) do not breach any agreement of Client with any third party, or any duty arising in law or equity, (b) do not violate any law, rule or regulation applicable to it and (c) are within its powers; and 6.3 EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 6.1, THE SERVICES AND THE SOFTWARE PLATFORM ARE PROVIDED "AS IS" AND MESA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SERVICES AND THE SOFTWARE PLATFORM UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING AND EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 6.1, MESA PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, THAT THE SERVICES OR THE PLATFORM SOFTWARE WILL MEET CLIENT'S REQUIREMENTS, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE.

## 7. SOLICITATION OF EMPLOYEES AND CONTRACTORS

4. During the Term and for a period of one year thereafter, neither party shall offer, or assist any other person to offer, employment to any then current employee or contractor of the other party or attempt, directly or indirectly, to persuade any such employee or contractor to terminate his or her employment with the other party.

## 8. TERM AND TERMINATION

8.1. This Agreement shall become effective on the date of signed agreement and Purchase Order receipt and shall, unless terminated earlier pursuant to any of its express provisions, continue for 1 year (the "**Initial Term**"). Upon expiration of the Initial Term, this Agreement shall automatically

renew for similar additional terms, or for such shorter period as may result from termination pursuant to an express provision hereof, unless either party provides written notice of nonrenewal at least sixty (60) days prior to the end of the Initial Term (together with the Initial Term, the "**Term**").

- 8.2. Client may terminate this Agreement for convenience upon sixty (60) days' prior written notice.
- 8.3. Client or Mesa may terminate this Agreement if the other party breaches the terms this Agreement and the breaching party fails to cure any such breach within thirty (30) days of notice of such breach by the non-breaching party.
- 8.4. Upon termination of this Agreement, (a) Client shall pay all Services Fees that are due and payable to Mesa and (b) each party shall return or destroy all of the other party's Confidential Information as certified by an officer of that company. In addition, Mesa will return or destroy the Client and student data in accordance with the Data Sharing Agreement.
- 8.5. In addition to those Sections of this Agreement which by their nature are intended to survive any expiration or termination of this Agreement, Sections 3(b), 5, 6.3, 8, 8.4, 11, 13 - 15 and this Section 8.5 shall specifically survive any expiration or termination of this Agreement.

## **9. INDEPENDENT CONTRACTOR**

The parties agree that nothing in this Agreement shall be construed as creating a joint venture, partnership, franchise, agency, employer/employee, or similar relationship between the parties, or as authorizing either party to act as the agent of the other. Mesa is and will remain an independent contractor in its relationship to Client. Client shall not be responsible for withholding taxes with respect to Mesa's compensation hereunder. Mesa shall have no claim against Client hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee or other benefits of any kind. Nothing in this Agreement shall create any obligation between either party and a third party.

## **10. TAXES**

- 1.
2. Unless otherwise agreed by the parties or provided by law, Client shall be responsible for any sales or use taxes directly arising in connection with the Services. Mesa shall be solely responsible and liable for all other compensation, taxes, benefits, charges, license fees, expenses and any other costs arising from or relating to the Services and/or this Agreement.

## **11. INSURANCE**

Mesa shall carry insurance with responsible insurance carriers reasonable acceptable to Client and with minimum limits of liability coverage, as stated below, against claims for damages caused by bodily injury, including death, to employees and third parties, and claims for property damage (the "**Insurance**"). Mesa must carry insurance with responsible carriers reasonably acceptable to Client rated A or better, by A.M. Best, with minimum limits of liability coverage as stated below, against claims for damages caused by bodily injury, including death, to employees and third parties, and claims for property damage.

Type of Coverage	Minimum Limits
1. Workers' Compensation and Employer's Liability	Statutory \$100,000 per accident
2. Automobile Liability: Bodily Injury and Property Damage  For all owned and non-owned vehicles and Hired vehicles	\$1,000,000  Combined Single Limit
3. Commercial General Liability	\$1,000,000  per occurrence

Mesa shall submit evidence at the time of execution of this Agreement that all Insurance is in full force and effect. Mesa shall maintain such Insurance in full force and effect throughout the Term.

## 12. DISPUTE RESOLUTION

- 12.1. If any controversy, claim or dispute arising out of or relating to this Agreement, including the breach or interpretation of this Agreement (collectively, a “**Dispute**”) is not resolved within thirty (30) days from the date that either party provides the other party with written notice of the existence thereof, then each party shall designate an executive who is authorized to investigate, negotiate and settle the Dispute. The executives shall exercise good faith efforts to settle the Dispute. If the executives do not resolve the Dispute within thirty (30) days (or an extended period if they so agree), then the parties shall resolve the Dispute in accordance with this Section 13.2. No court or other action pertaining to a Dispute shall be pursued unless this dispute resolution procedure has been exhausted. Nonetheless, either party at any time may pursue equitable relief before any court of competent jurisdiction in order to protect its intellectual property rights or Confidential Information.
- 12.2. Any Dispute that is not resolved in accordance with Section 12.1 shall be determined by, and subject to the exclusive jurisdiction of, the federal and state courts in Austin, Texas and the parties agree to the personal and exclusive jurisdiction of these courts. The parties hereby agree that any such court shall be a proper forum for the determination of any dispute arising hereunder and waive any defenses based upon inconvenient forum or jurisdiction. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO ANY CLAIM OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, THE SERVICES OR THE PLATFORM SOFTWARE. EACH PARTY AGREES TO PARTICIPATE IN GOOD FAITH IN ANY COURT APPROVED ALTERNATIVE DISPUTE RESOLUTION PROCESS AVAILABLE PRIOR TO TRIAL IN AN EFFORT TO AMICABLY RESOLVE ANY DISPUTE.
- 12.3. In the event that either party institutes any legal suit, action or proceeding against the other party arising out of or relating to any Dispute, then the prevailing party in the suit, action or

proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses and court costs.

### **13. LIMITATION OF LIABILITY.**

EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR A BREACH OF SECTION 3 OR 5, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER ENTITY FOR LOST PROFITS, LOST BUSINESS OPPORTUNITIES OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY ANYONE OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF WARRANTY, BREACH OF CONTRACT, REPUDIATION OF CONTRACT, NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL MESA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICES OR THE PLATFORM SOFTWARE, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF THE SERVICES FEES PAID TO MESA PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. The essential purpose of this provision is to limit the potential liability of the parties arising out of this Agreement whether for breach of contract, negligence, or otherwise. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

### **14. SOFTWARE INDEMNIFICATION**

Mesa will indemnify, defend and hold harmless the Client from and against any and all third party claims, and reasonable resulting attorneys' fees and court costs, to the extent that such claim, action or demand arises from any of the following: the Works and/or the Software provided by Mesa pursuant to this Agreement that: (a) infringes a copyright held by that third party; (b) infringes that third party's US patent; or (c) constitutes misappropriation or unlawful disclosure or use of that third party's trade secrets (collectively, "Infringement Claims"). Mesa agrees and acknowledges that the limitation of liability set forth herein shall not apply to Infringement Claims.

5.

### **15. MISCELLANEOUS**

15.1. This Agreement shall be governed and construed in accordance with the laws of the State of Texas without regard to its conflict-of-law rules. The parties disclaim the United Nations Convention on Contracts for the International Sale of Goods, which shall not apply to this Agreement or the parties' performance hereunder.

15.2. The obligations of a party (other than payment) will be suspended by the occurrence of any event beyond its reasonable control and not caused by its negligence, that renders its performance impossible including, acts of God, war, fire, flood, accident, strike, casualty, power failures, governmental acts, orders or restrictions or inability to obtain suitable and sufficient labor and materials. The party invoking force majeure shall (a) send written notice thereof to the other Party within a reasonable time after the invoking party knew or should have known that performance would be delayed or prevented due to the force majeure and (b) take reasonable steps to limit the duration and effect of any such force majeure.

- 15.3. In the event that any provision of this Agreement shall be adjudged illegal or otherwise unenforceable, such provision shall be severed and the balance of this Agreement shall continue in full force and effect.
- 15.4. The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any other breach.
- 15.5. Neither party shall assign this Agreement, and/or the performance of any of the Services without the prior written consent of the other party, except that a party may assign this Agreement with consent in connection with a merger, acquisition or sale of all or substantially all of its assets.
- 15.6. Each party acknowledges that if the other party were to breach the terms of Section 3, 5, or 8, the harm to such other party would be irreparable. Accordingly, each party agrees that in the event of any such breach, such other party shall be entitled to obtain injunctive relief without posting a bond.
- 15.7. Except as provided in Section 12.2, the rights and remedies of the parties hereunder shall not be exclusive and are in addition to any of other rights provided by this Agreement or by law.
- 15.8. This Agreement, including the Exhibits, is the entire agreement of the parties with respect to the performance of the Services by Mesa for and on behalf of Client. Any additional terms or any modification to this Agreement shall not be binding on either party unless in a writing duly signed by the party to be charged.
- 15.9. Mesa and Client and their respective employees and agents shall not directly or indirectly make an offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision of an official of any government (including a decision not to act) or inducing such a person to use his influence to affect any such governmental act or decision in order to assist Mesa or Client in obtaining, retaining or directing any such business.
- 15.10. Each party shall adhere to all applicable export laws and regulations and shall not export or re-export or otherwise transmit, directly or indirectly, any information or products except with the applicable government export approvals or permits.
- 15.11. Mesa shall have the right to identify Client as a client and to use its logo on its website and in any other promotional materials. Subject to the foregoing, no publicity releases (including news releases and advertising or solicitation materials) or other public statements relating to this Agreement or the Services to be performed hereunder shall be issued or made by Mesa without the prior written approval of Client, which approval shall not be unreasonably withheld. Similarly, Client may make publicity or promotional announcements identifying Mesa as a contractor subject to the same privileges and conditions as stated above.

**Sharing of Education Records.** Pursuant to this Agreement, and throughout its term, Mesa will receive from Client personally identifiable student information, the confidentiality of which is protected under the Family Educational Rights and Privacy Act. The parties agree that such information is being shared pursuant to 34 C.F.R. §99.30(a). Mesa acknowledges and agrees that, in accordance with these laws, and the regulations implementing them, it may use such information only for the purposes for which the disclosure is made and may not disclose the information to any other party. Mesa shall not

allow anyone to obtain access to personally identifiable information including information about the student, educators, and school(s) from education records except in strict accordance with the requirements, of this Agreement.

5. **Background Check.** All employees, appointees or agents who come into contact with students shall first submit to and clear a background check in a manner prescribed by Section 435.04, F.S.

*[signatures on next page]*

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

<p>Mesa Cloud Inc.</p>   <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p><b>District Name</b></p>   <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
---	--

## Data Sharing Agreement

### DATA SHARING AGREEMENT

BY AND BETWEEN

**DISTRICT NAME**

AND

MESA CLOUD INC

The **DISTRICT NAME** referred to in this agreement as (School District) agrees to provide confidential student data to MESA CLOUD INC solely for the purpose of using its Mesa onTime Software. The terms of this agreement between MESA CLOUD INC and School District shall be in effect as of **START DATE** and shall continue indefinitely, unless terminated in writing by both parties.

These data will be provided in an encrypted, password protected electronic format by School District Management Information Systems (MIS), in accordance with School District Board Policy. MESA CLOUD INC will not ask for or collect personal information (including e-mail addresses, names, usernames, etc.) unless is it necessary to deliver Vendor's Services and approved in advance by MIS. School District hereby appoints the following individual as authorized to give approval from MIS: Chief Technology Officer, School District. All other authority shall remain with School District's Superintendent of Schools or written designee, which for purposes of executing or amending this agreement is Superintendent of Schools or designee.

MESA CLOUD INC agrees not to disclose, share, sell, trade, lease, or loan personal information to any third party, including but not limited to any parent of any student, for any reason, including but not limited to for marketing or advertising. Should MESA

CLOUD INC be acquired, sold, file bankruptcy, or undergo any change of control, then MESA CLOUD INC agrees to provide written notification to School District and obtain written permission 90 days prior to any personal information disclosure or transfer to such entity. All student, staff, and program data stored or generated during the term of this agreement are considered property of School District. Within 60 days following completion of Vendor's Services or 30 days following written notice from School District, MESA CLOUD INC shall destroy all personal data and shall provide School District with a sworn affidavit stating that the data have been destroyed.

MESA CLOUD INC is hereby notified that any unauthorized disclosure of confidential student information is a violation of FERPA and the implementing regulations found in Title 34, Code of Federal Regulations, Part 99, and shall not be permitted to occur.

While in possession of these data, MESA CLOUD INC shall permit access to these data only to its employees, agents, and contractors authorized to access the digital online curriculum program. MESA CLOUD INC also agrees to store the data in a secure and locked area, and to prevent unauthorized access.

MESA CLOUD INC acknowledges School District's obligations and requirements under FERPA and agrees to provide services including, without limitation, the handling of confidential student information that is compliant with the FERPA requirements as referenced above.

In addition, MESA CLOUD INC agrees to commit to the items in K-12 School Service Provider Pledge to Safeguard Student Privacy that is found at <https://studentprivacypledge.org/privacy-pledge/>, excerpts of which are included below:

- ✗ Not collect, maintain, use or share student personal information beyond that needed for authorized educational/school purposes, or as authorized by the parent/student.
- ✗ Not sell student personal information.
- ✗ Not use or disclose student information collected through an educational/school service (whether personal information or otherwise) for behavioral targeting of advertisements to students.
- ✗ Not build a personal profile of a student other than for supporting authorized educational/school purposes or as authorized by the parent/student.
- ✗ Not make material changes to school service provider consumer privacy policies without first providing prominent notice to the account holder(s) (i.e., the educational institution/agency, or the parent/student when the information is collected directly from the student with student/parent consent) and allowing them choices before data is used in any manner inconsistent with terms they were initially provided; and not make material changes to other policies or practices governing the use of student personal information that are inconsistent with contractual requirements.
- ✗ Not knowingly retain student personal information beyond the time period required to support the authorized educational/school purposes, or as authorized by the parent/student.
- ✓ Collect, use, share, and retain student personal information only for purposes for which we were authorized by the educational institution/agency, teacher or the parent/student.
- ✓ Disclose clearly in contracts or privacy policies, including in a manner easy for parents to understand, what types of student personal information we collect, if any, and the purposes for which the information we maintain is used or shared with third parties.
- ✓ Support access to and correction of student personally identifiable information by the student or their authorized parent, either by assisting the educational institution in meeting its requirements or directly when the information is collected directly from the student with student/parent consent.
- ✓ Maintain a comprehensive security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of student personal information against risks – such as unauthorized access or use, or unintended or inappropriate disclosure – through the use of administrative, technological, and physical safeguards appropriate to the sensitivity of the information.
- ✓ Require that our vendors with whom student personal information is shared in order to deliver the educational service, if any, are obligated to implement these same commitments for the given student personal information.
- ✓ Allow a successor entity to maintain the student personal information, in the case of our merger or acquisition by another entity, provided the successor entity is subject to these same commitments for the previously collected student personal information.

---

John Ruff

---

DATE

COO

Mesa Cloud Inc

---

NAME:

---

DATE

TITLE:

**DISTRICT NAME**