

AGREEMENT

Between the
South Gibson SCHOOL CORPORATION
And
CENTRAL INDIANA EDUCATIONAL SERVICES CENTER

This AGREEMENT ("Agreement") is made and entered into, by and between the South Gibson School Corporation, an Indiana public school district located in Fort Branch, Indiana (hereinafter the "District") and the Central Indiana Educational Services Center, a not-for-profit corporation organized in the State of Indiana (hereinafter "CIESC"), each a "Party" and together the "Parties", as of the date signed by both Parties, and includes the following exhibits:

- a. Exhibit A (Products and Services)
- b. Exhibit B (CIESC Proprietary Marks)

RECITALS

A. **WHEREAS**, CIESC offers technology-based training materials that the District desires to use to train its staff to meet certain training requirements mandated by State and Federal law.

B. **WHEREAS**, it is the intention of both Parties to enter into a long-term relationship in which CIESC provides to the District access to the technology-based training materials to help assure the District is meeting its legal training obligations required by law.

NOW, THEREFORE, the Parties mutually agree as follows:

1. CIESC RESPONSIBILITIES.

1.1 Description of Educational Products. During the term of this Agreement, CIESC will license to the District, on a non-exclusive basis, the right to use the products and services as described in Exhibit A, (collectively referred to as the "Training Library") for the sole purpose of training its employees. During the term of this Agreement, the Parties may agree upon CIESC licensing additional products and services to the District beyond those listed in Exhibit A. If additional products and/or services would become available from CIESC, then any provisions for additional products and/or services will be mutually agreed upon in writing and signed by an authorized agent for each Party to this Agreement.

1.2 Place of Performance. Performance of any educational services provided by CIESC pursuant to this Agreement is not required to be rendered by CIESC on the District's premises.

1.3 Compliance. CIESC will provide the District with access to the Training Library materials that are described in Exhibit A. The District is responsible for ensuring all training provided to its staff meet all State, Federal and District requirements.

1.4 Non-Discrimination. CIESC prohibits discrimination in all its programs and activities on the basis of race, color, religion, sex, national origin, age, disability, and all other statuses recognized by law.

2. DISTRICT RESPONSIBILITIES.

2.1 Payment Obligation. In exchange for the license to the materials in the Training Library, the District shall compensate CIESC. A single invoice will be sent following signed agreement. Pricing is as follows:

\$1,800 for 500 users
\$3,600 for 501-1,000 users
\$4,800 for 1,001-1,800 users

2.2 Oversight of Use of the Training Library. The District shall be responsible for monitoring its employees' use of the materials in the Training Library to ensure compliance with the terms of this Agreement and applicable law. The District shall also be responsible for ensuring its employees are fulfilling all training requirements imposed by Federal and State law. The selection of District employees who are charged with the responsibility for providing oversight under this provision is determined by the District.

2.3 Program Related Correspondence. The District shall provide CIESC with any reports, documents and other findings that are related or may have an impact on the Training Library and/or CIESC's obligations herein.

2.4 District Compliance. The District will perform its obligations under this Agreement and shall comply with, and govern itself in a manner consistent with, the requirements of all applicable law.

3. TERM OF AGREEMENT.

3.1 Term. This Agreement will become effective upon the date of full execution by the Parties for commencement on 1 July 25 ("Effective Date") and will terminate on 30 June 26 ("Initial Term") unless sooner terminated as permitted under the Section 6 of this Agreement.

3.2 Renewal. Following the Initial Term, this Agreement will automatically extend for successive additional periods of one year (each such period is hereinafter referred to as a "Renewal Term"), unless (a) either Party provides the other with written notice of non-renewal at least two months before the expiration of the then-current Initial Term or Renewal Term (as applicable); or (b) the Agreement is sooner terminated under Section 6 of this Agreement. The Initial Term and any Renewal Terms will be referred to collectively in this Agreement as the "Term".

4. RELATIONSHIP OF THE PARTIES.

4.1 Status of the Parties. CIESC is not a division or any part of the District. The District is a public school corporation organized under the laws of the State of Indiana and is governed independently by its Board of Education and is not a division or a part of CIESC. The relationship between the Parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Agreement. The Parties are independent contractors. Nothing herein will be construed to create a partnership or joint venture by or between the District and CIESC. Neither Party will be the agent of the other. The District, the Board of Education and their employees will in no case represent to third parties, and will whenever needed disclaim to such third parties, any ability to bind CIESC to any duty imposed by contract, other than this Agreement or as otherwise agreed in writing by CIESC.

5. OTHER SCHOOLS. The Parties acknowledge that CIESC retains its rights to render similar services and provide similar products to other persons or entities including, but not limited to, other public schools, institutions or districts within Indiana.

6. TERMINATION. This Agreement may be terminated prior to the end of the Term as follows:

6.1. Termination for Cause. The Parties shall use good faith efforts to resolve all disputes relating to this Agreement; however, either Party may terminate this Agreement for cause prior to the expiration of the Initial Term or any Renewal Term with 30 days' prior written notice to the other Party. Termination for cause shall

mean the breach of any material term or failure to fulfill any material condition, term, provision, representation, warranty, covenant or obligation contained in this Agreement, and a failure to cure such a breach within 30 days after receiving written notification from the terminating Party. Upon termination of this Agreement, the non-breaching Party shall be entitled to seek any remedies for which it would be entitled at law or in equity. Additionally, in the event the District does not cure the material breach of this Agreement as set forth in this provision, then CIESC, in its sole discretion, may continue performance so long as there are no outstanding payments due to CIESC in lieu of terminating this Agreement, but such continuance shall not be deemed a waiver of any of CIESC's rights hereunder, including termination.

6.2. Change in Applicable Law. If any change in law enacted after the date hereof could reasonably be expected to have a material adverse effect on the ability of either Party to carry out its obligations under this Agreement, such Party, upon written notice to the other Party (which notice may be given at any time following enactment of such change in law, whether or not such change is effective on the date of such enactment or is effective at a later date), may request renegotiation of this Agreement. Such renegotiation will be undertaken in good faith. If the Parties are unable to renegotiate and agree upon revised terms within 30 days after such notice of renegotiation, then this Agreement will be terminated effective at the end of the school year in which such notice was given.

7. **TERMINATION EFFECTS.** The effects of termination are as follows:

7.1. Outstanding Payments Due. Except as otherwise agreed by the Parties in writing, termination does not relieve the District of any obligations for payments outstanding to CIESC as of the date of termination, including for products and services rendered by CIESC during the Term, or other obligations that continue upon termination as provided in this Agreement.

8. **INTELLECTUAL PROPERTY RIGHTS.**

8.1. Proprietary Materials. The District acknowledges and agrees that CIESC has the right to license (or sublicense as the case may be) certain intellectual property rights and interests in and to CIESC's (and respective licensor's) intellectual property, including but not limited to the materials in the Training Library, trade secrets, know-how, proprietary data, documents and written materials in any format, artwork, graphics, software, website design and other materials created for the Training Library, and all derivative works thereof (collectively hereinafter referred to as the "CIESC Proprietary Materials"). The District further acknowledges and agrees that: (i) it has no intellectual property interest or claims in the CIESC Proprietary Materials or any customizations and derivative works thereof or any other materials created for use in connection with the CIESC Proprietary Materials, (ii) it has no right to use the CIESC Proprietary Materials unless expressly agreed to herein by CIESC, and (iii) CIESC (and respective licensors as the case may be) own all intellectual property rights in and to the CIESC Proprietary Materials.

8.2. License of CIESC Proprietary Materials. CIESC hereby grants the District a royalty-free, non-exclusive, non-transferable sub-license, during the Term, to use the CIESC Proprietary Materials on the CIESC web site internally within the District solely in connection with training the District's employees as contemplated in this Agreement.. The District shall not use the CIESC Proprietary Materials offline, and shall not duplicate the content of the CIESC Proprietary Materials for use elsewhere. Notwithstanding the foregoing, the District shall not: (i) modify or otherwise create, or permit third parties to modify or otherwise create, derivative works from or using the CIESC Proprietary Materials, or (ii) sublicense any rights under this Agreement without the advance written approval of CIESC, which approval may be withheld by CIESC in its sole discretion. Upon the termination of such license, the District will cease use of the CIESC Proprietary Materials, and will return all CIESC Proprietary Materials to CIESC promptly, including those in the possession of the District's employees and agents who have been using CIESC's Proprietary Materials.

8.3. Rights of CIESC in CIESC Proprietary Marks. The District acknowledges and agrees that, as between the District and CIESC, CIESC owns and shall maintain all intellectual property rights, title and interest,

including any goodwill, in and to CIESC's trademarks, service marks, trade dress and trade names including names of CIESC's products and services, logo(s) and related marks and trade dress and the CIESC mark, CIESC (& Design) and as may be featured in Exhibit B (collectively, "CIESC Proprietary Marks"). The District further acknowledges and agrees that it has no intellectual property interest or claims in the CIESC Proprietary Marks, any customizations and derivative works thereof, or any other materials created for use in connection with the CIESC Proprietary Marks and has no right to use the CIESC Proprietary Marks except in the limited capacity as may be permitted in this Agreement unless expressly agreed to in writing in advance by CIESC, which agreement CIESC may withhold in its sole discretion.

9. LIMITS ON LIABILITY AND DAMAGES.

9.1. LIMIT OF LIABILITY. CIESC'S MAXIMUM LIABILITY AND OBLIGATION TO THE DISTRICT AND THE DISTRICT'S EXCLUSIVE REMEDY FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE RECOVERY OF ACTUAL DIRECT DAMAGES UP TO THE AMOUNT OF FEES PAID UNDER THIS AGREEMENT IN THE PRIOR SIX (6) MONTHS.

9.2. CONSEQUENTIAL DAMAGES. EXCEPT IN CONNECTION WITH ITS INDEMNITY OBLIGATIONS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST SAVINGS, LOST PROFITS, LOST SALES, BUSINESS INTERRUPTIONS, DELAY DAMAGES, DAMAGES FOR THIRD PARTY CLAIMS, LOST OR DESTROYED DATA, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER OCCASIONAL SHORT-TERM INTERRUPTIONS OF SERVICE OR PRODUCTS, WHICH ARE NOT UNREASONABLE UNDER COMPARABLE INDUSTRY STANDARDS OR INTERRUPTIONS OF SERVICE OR PRODUCTS RESULTING FROM EVENTS OR CIRCUMSTANCES BEYOND CIESC'S REASONABLE CONTROL SHALL BE CAUSE FOR ANY LIABILITY OR CLAIM AGAINST CIESC HEREUNDER, NOR SHALL ANY SUCH OCCASION RENDER CIESC IN BREACH OF THIS AGREEMENT.

10. ASSIGNMENT. Except as otherwise provided in this Agreement, neither Party may assign or delegate any rights or obligations under this Agreement without the prior written consent of the other Party.

11. INDEMNITY.

11.1. The Party charged with indemnifying and/or defending under this provision (the "Indemnifying Party") shall conduct the defense in any such third party action arising as described herein and the Party claiming the benefits of this Section 11 (the "Indemnified Party") promises to cooperate with such defense, provided the Indemnifying Party reasonably consults with the Indemnified Party on any settlement (subject to the consent requirement in the last sentence of this paragraph). Notwithstanding the foregoing, the Indemnified Party may, at its own expense, assist in such defense if it so chooses, provided that the Indemnifying Party shall be entitled to control such defense and all negotiations relative to the settlement of any such claim. Any settlement that would admit any liability on the part of the Indemnified Party shall require such Indemnified Party's prior written consent.

11.2. Indemnification of the District. CIESC will indemnify, defend, and save and hold the District and all of its employees, administrators, board members, and agents, harmless against any and all claims, demands, suits, or other forms of liability including without limitation costs and reasonable attorneys' fees (each a "Claim") that may arise out of, or by reason of, any (a) breach of any expressed representation or warranty, covenant or agreement made or to be performed by CIESC pursuant to this Agreement, (b) noncompliance by

CIESC with any law in connection with the District's operations, but excluding any Claims that arise from conduct undertaken in accordance with the District's instructions, procedures or written policies, except where such instructions arise from and are in accordance with specific advice or explicit recommendations formally provided by CIESC, and (c) act or omission of CIESC or any of its employees, officers, directors, board members, subcontractors or agents in connection with the District's operations that results in injury or loss to person or property, except to the extent any Claims arise out of actions or omissions of the District or its employees, administrators, Board members or agents.

11.3 Indemnification of CIESC. The District will indemnify, defend, and save and hold CIESC and its employees, officers, directors, board members, subcontractors, and agents, harmless against any and all Claims that may arise out of, or by reason of, any (a) breach of any expressed representation or warranty, covenant or agreement made or to be performed by the District pursuant to this Agreement, (b) noncompliance by or on behalf of the District with any law in connection with the District's operations, and (c) act or omission of the District or any of its employees, administrators, board members, or agents in connection with the District's operations that results in injury or loss to person or property except to the extent any Claims arise out of actions or omissions of CIESC.

12. REPRESENTATIONS AND WARRANTIES.

12.1. Representations and Warranties of CIESC. CIESC hereby represents and warrants to the District:

12.1.1. Organization and Good Standing. CIESC is a not-for-profit corporation duly organized, validly existing, and in good standing under the laws of the State of Indiana.

12.1.2. Power and Authority; Authorization; Binding and Enforceable Agreement. CIESC has full authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly authorized and executed by CIESC and constitutes the valid and legally binding obligation of CIESC, enforceable against CIESC in accordance with its terms.

12.1.3. Professional Services. CIESC warrants that the Services provided pursuant to this Agreement will be performed in a professional and workmanlike manner in accordance with commercially reasonable industry standards, and deliverables, if any, will materially comply with the agreed upon functional specification set forth in the applicable Exhibit A, if used in a manner consistent with the conditions for which it was designed. THE FOREGOING WARRANTIES MADE BY CIESC IN THIS SECTION (AND ITS SUBSECTIONS) ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND CIESC MAKES NO GUARANTEES AS TO THE TRAINING OUTCOMES OF THE DISTRICT'S EMPLOYEES. WITHOUT LIMITING THE FOREGOING, CIESC MAKES NO GUARANTEES AND SHALL NOT BE LIABLE FOR NON-ACCESSIBILITY OF THE CIESC WEBSITE, END-USER CONNECTION SPEED OR CONNECTIVITY PROBLEMS.

12.1.4. Non-Conformities. The foregoing warranties shall not apply to defects or non-conformities: (a) resulting from software, hardware or interfacing not supplied by CIESC or its authorized contractors; or (b) resulting from inadequate or improper maintenance, modification, storage or usage of the CIESC-provided materials by the District, its employees or students. In addition, the foregoing warranty shall not apply to requirements not expressly included in this Agreement.

12.2. Representations and Warranties of the District. The District hereby represents and warrants to CIESC:

12.2.1. Organization and Good Standing. The District is a public school corporation duly organized, validly existing, and in good standing under the laws of the State of Indiana.

12.2.2. Power and Authority; Authorization; Binding and Enforceable Agreement. The District has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly authorized and executed by the District and constitutes the valid and legally binding obligation of the District, enforceable against it in accordance with its terms and conditions.

12.2.3. Authority Under Applicable Law. The District has the authority under law to: (i) contract with CIESC to obtain the Services and all other products and services under this Agreement; (ii) to execute, deliver, and perform this Agreement; and (iii) to incur the obligations provided for under this Agreement.

12.2.4. Provision of Authority to CIESC. The District has provided and will provide CIESC with all authority and power necessary and proper for CIESC to undertake its responsibilities, duties, and obligations provided for in this Agreement.

13. OFFICIAL NOTICES. All notices and other communications required by the terms of this Agreement will be in writing and sent to the Parties hereto at the addresses set forth below (and such addresses may be changed upon proper notice to such addressees). Notice may be given by: (i) certified or registered mail, postage prepaid, return receipt requested, (ii) reputable overnight carrier, postage prepaid, or (iii) personal delivery (with written receipt confirming such delivery). The addresses of the Parties are:

For CIESC:

Dr. Andrew Melin

For District:

14. DISPUTE RESOLUTION, VENUE AND GOVERNING LAW.

14.1. Dispute Resolution Procedure. The Parties agree that they will attempt in good faith to settle any and all disputes arising in connection with this Agreement amicably in the ordinary course of business. If the dispute is not resolved after ten (10) calendar days from the receipt of such written notice, then the Parties shall escalate the matter to the District's Superintendent and the Executive Director for CIESC. The dispute resolution procedures described herein will be deemed complete upon the earlier to occur of the following: (i) the Parties mutually agree in writing to discontinue the dispute resolution procedures; or (ii) the relevant dispute is not resolved within the time periods provided hereunder.

14.2. Mediation. If the Parties are unable to resolve the dispute pursuant to the Section immediately above, the Parties agree that they will attempt in good faith to settle any and all disputes arising out of this Agreement, including those disputes relating to the enforceability or validity of this Agreement, through a process of mediation in Marion County, Indiana under the supervision of a mutually agreed upon mediator. In the event that mediation fails to settle any such dispute(s), the Parties may pursue relief through any court with appropriate jurisdiction in Marion County, Indiana. Each Party will bear its own costs and expenses associated with the dispute resolution procedures set forth in this Section except that the Parties will share equally any fees payable to a professional mediator.

14.3. Injunctive Relief. Notwithstanding the foregoing dispute resolution procedures, the District acknowledges that in the event it breaches any provision contained in the Section entitled "Intellectual Property Rights", CIESC may suffer irreparable harm in which the full extent of damages may be impossible to ascertain and monetary damages may not be an adequate remedy. As such, in its sole discretion, CIESC may seek immediate judicial relief as available in law or equity, and the initiation of any judicial proceeding will suspend the dispute resolution procedures set forth above. CIESC will be entitled to enforce this Agreement by an injunction or other equitable relief without the necessity of posting bond or security, in addition to its right to seek monetary damages or any other remedy. The decision by CIESC not to seek judicial relief during the above described dispute resolution procedures will not create any inference regarding the presence or absence of irreparable harm.

14.4. Governing Law. The laws of the State of Indiana without regard to its conflict of laws provisions will govern this Agreement, its construction, and the determination of any rights, duties, and remedies of the Parties arising out of or relating to this Agreement.

15. MISCELLANEOUS.

15.1. Force Majeure. Notwithstanding any other sections of this Agreement, no Party will be liable for any delay in performance or inability to perform (except for payments due hereunder) due to acts of God or due to war, riot, terrorism, civil war, embargo, fire, flood, explosion, sabotage, pandemic, accident, labor strike, Internet outage or other acts beyond its reasonable control and unrelated to its fault or negligence.

15.2. Entire Agreement. This Agreement including its attachments hereto constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all previous and contemporaneous oral and written negotiations, commitments, agreements, warranties, representations and understandings. This Agreement will not be altered, amended, modified, or supplemented except in a written document executed by the Parties.

15.3. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which will constitute one and the same instrument.

15.4. Amendment. This Agreement will not be altered, amended, modified, or supplemented except in a written document executed by the Parties.

15.5. Waiver. No waiver of any provision of this Agreement will be effective unless in writing, nor will such waiver constitute a waiver of any other provision of this Agreement, nor will such waiver constitute a continuing waiver unless otherwise expressly stated.

15.6. Interpretation. The Parties hereto acknowledge and agree that the terms and provisions of this Agreement, will be construed fairly as to all Parties hereto and not in favor of or against a Party, regardless of which Party was generally responsible for the preparation of this Agreement.

15.7. Severability. In the event any term, provision or restriction is held to be illegal, invalid or unenforceable in any respect, such finding shall in no way affect the legality, validity or enforceability of all other provisions of this Agreement. To the extent that any of the services to be provided by CIESC are found to be overbroad or an invalid delegation of authority by the Board, such services will be construed to be limited to the extent necessary to make the services valid and binding.

15.8. Survival of Termination. All representations, warranties, and indemnities expressly made in this Agreement will survive termination of this Agreement.

15.9. Headings and Captions. The headings and captions appearing in this Agreement have been included only for convenience and shall not affect or be taken into account in the interpretation of this Agreement.

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IN WITNESS WHEREOF the Parties have entered into this Agreement as of the date set forth below.

For and on behalf of

**For and on behalf of
CENTRAL INDIANA EDUCATIONAL
SERVICES CENTER**

Dr. Andrew Melin, Executive Director