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AVID Center

Products and Services Quote/Order

Quote/Order #: Q-79582
Client: San Leandro Unified School District
Address: 835 E 14th St Ste 200
San Leandro, CA 94577

AVID Center Representative: Joni Guerrero
Phone: (303) 436-2202
Email: jguerrero@avid.org

Effective Date: July 01, 2020

Expiration Date: June 30, 2021

John Muir Middle School			
QTY	PRODUCT NAME	UNIT PRICE	EXTENDED PRICE
1	AVID Membership Fees Secondary	$4,099.00	$4,099.00
		John Muir Middle School SUBTOTAL:	**$4,099.00**

TOTAL: $4,099.00

plus all applicable taxes

This AVID Products and Services Quote/Order ("Quote/Order"), together with the General Terms and Conditions ("Ts&Cs") attached hereto as Exhibit "A" (collectively, this "Agreement" or "AVID Agreement"), constitutes a binding agreement between AVID Center and the "Client" identified above with respect to the AVID Products and Services (as defined in the Ts&Cs) specified in this Quote/Order. The Ts&Cs attached to this Quote/Order will apply to any Subsequent Quote/Order that is placed by Client. Each party agrees to be bound by the terms of this Agreement and has caused this Agreement to be signed by its duly authorized representative. The terms of this Quote/Order or Subsequent Quote/Order will control in the event of a conflict with the Ts&Cs.

Additional Comments:

N/A

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IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below their signatures, but such dates shall not alter the Term of this Agreement as specified herein:

	AVID Center, a California Non-Profit Corporation 501(c)(3)		San Leandro Unified School District
Signature:		**Signature:**	DocuSigned by: Joanne Clark BB78E8E04D884DC...
Print Name:		**Print Name:**	Joanne Clark
		Email Address	joanneclark@slusd.us
Title:		**Title:**	Senior Director Ed Services
Date:		**Date:**	6/4/2020 | 3:05 PM PDT

AVID Center
9797 Aero Drive, Suite 100
San Diego, CA 92123
Employer ID # 33-0522594

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Exhibit "A"

AVID Center General Terms and Conditions

These General Terms and Conditions (these "Ts&Cs") set forth an agreement by and between AVID Center, a California nonprofit corporation ("AVID Center"), and the "Client" identified in the attached Quote/Order. Client agrees to these Ts&Cs by entering into the Quote/Order or a Subsequent Quote/Order regardless of whether these Ts&Cs are attached to such Quote/Order or Subsequent Quote/Order. These Ts&Cs shall prevail over any terms and conditions contained in any purchase order or other document submitted by Client and fulfillment of the Quote/Order or a Subsequent Quote/Order does not constitute acceptance of any of Client's terms and conditions and does not modify or amend these Ts&Cs. If an individual enters into the Quote/Order or a Subsequent Quote/Order on behalf of his/her employer, then such individual hereby represents and warrants that he/she has the authority to bind such entity to this Agreement.

Article I. Definitions. Capitalized terms in these Ts&Cs not defined in the Quote/Order or a Subsequent Quote/Order or elsewhere in these Ts&Cs shall have the meanings set forth below:

1.1. "AVID Materials" shall mean any materials, in any medium, printed or electronic, provided by AVID Center relating to the AVID Products and Services.

1.2. "AVID Member Site" shall mean each Client facility identified in the Quote/Order or a Subsequent Quote/Order where the AVID Products and Services will be implemented.

1.3. "AVID Methodologies" shall mean AVID Center's proprietary methodologies incorporated within the AVID Products and Services.

1.4. "AVID Products and Services" shall mean the descriptions and requirements related to the products and services specified in the Quote/Order or a Subsequent Quote/Order, as described on the area of AVID Center's website located at https://www.avid.org/Page/3290. Such descriptions and requirements may change from time to time at AVID Center's sole discretion without prior notice to Client and are hereby incorporated herein by this reference.

1.5. "Proprietary Information" shall mean confidential or proprietary information pertaining to AVID Center's business, products or services, including without limitation AVID Methodologies, techniques, processes, designs, and research, and the terms of this Agreement.

1.6. "Subsequent Quote/Order" shall mean an order signed by AVID Center and Client to renew a subscription of the AVID Products and Services or any Amendment to a Quote/Order.

1.7. "Site Data" shall mean data collected from an AVID Member Site pertaining to student demographics, course enrollment, site characteristics and related outcomes.

1.8. "Student Data" shall mean individual student academic and disciplinary data.

Article II. Term.

2.1. Term. The term of this Agreement shall commence on the date specified in the Quote/Order or Subsequent Quote/Order and, unless earlier terminated as provided herein, shall continue until the expiration date specified in the Quote/Order, unless renewed pursuant to a Subsequent Quote/Order ("Term").

Article III. Licenses.

3.1. AVID Products and Services.

(a) Subject to all of the terms and conditions of this Agreement, AVID Center hereby grants to Client during the Term a limited, non-exclusive, non-transferable license, without the right to sublicense, to (i) use, and permit AVID Member Sites to use (a) the AVID Products and Services corresponding to such AVID Member Sites as specified in the Quote/Order or a Subsequent Quote/Order, and (b) the AVID Methodologies solely to implement the AVID Products and Services and for no other purpose, and (ii) reproduce the AVID Materials and distribute and display copies of such AVID Materials to staff and students of AVID Member Sites where such AVID Products and Services are implemented.

(b) This Agreement grants Client only the rights to use the AVID Products and Services and AVID Materials as set forth herein and does not convey or transfer title or ownership of any AVID Products and Services or AVID Materials to Client. All rights not expressly granted herein are reserved by AVID Center, and no other licenses are granted herein by implication, estoppel or otherwise.

3.2 Restrictions. Except as permitted in this Agreement, Client shall not, nor permit any third party to, engage in any of the following conduct:

(a) Provide, sell, sublicense, transfer, or lease any AVID Products and Services or AVID Materials;

(b) Distribute, broadcast or transmit in any medium whatsoever any AVID Products and Services or AVID Materials, except to AVID Member Sites solely via a password-protected website that is accessible only to staff and students of such AVID Member Site;

(c) Reproduce any AVID Products and Services or AVID Materials, except for classroom or school use;

(d) Distribute or transmit through the Internet any AVID Materials or AVID Methodologies to AVID Member Sites, except to a password-protected website that is accessible only to staff and students of such AVID Member Site;

(e) Enable AVID Member Sites to download electronic versions of any AVID Products and Services or AVID Materials, other than downloads by staff and students of AVID Member Sites who are required to agree prior to downloading (via clicking an "Accept" button or other form of electronic acknowledgement) not to distribute, reproduce, display, or transfer such AVID Products and Services or AVID Materials to anyone other than staff and students of their AVID Member Site;

(f) Modify or create derivative works of any AVID Products and Services or AVID Materials;

(g) Use or integrate any AVID Products and Services or AVID Materials with any product or service other than the AVID Products and Services or to develop any other product or service;

(h) Use any AVID Products and Services or AVID Materials in connection with any timesharing service, service bureau, network or any other services for revenue-generating purposes; or

(i) Obscure, remove, alter or fail to reproduce any copyright notice and other proprietary legends contained on or in any AVID Products and Services or AVID Materials.

3.3 AVID Trademarks.

(a) Subject to all of the terms and conditions of this Agreement, AVID Center grants to Client during the Term a limited, nonexclusive, non-transferable, indivisible license, without the right to sublicense, to use the "AVID" trademarks, service marks and logos (collectively, "AVID Trademarks") only (i) as they are incorporated within the AVID Materials; and (ii) on advertising and promotional materials created by Client or AVID Member Sites to promote the AVID Products and Services implemented at such AVID Member Sites.

(b) Client shall at all times use the AVID Trademarks in a professional manner in order to preserve and enhance AVID Center's substantial goodwill associated with the AVID Trademarks.

(c) Client shall not, and shall ensure that AVID Member Sites do not, (i) use any AVID Trademarks as a business name or trade name; (ii) adopt any trademark that is confusingly similar to any AVID Trademarks; (iii) submit any application or otherwise attempt to register for itself or others any AVID Trademarks; (iv) modify or otherwise alter any AVID Trademarks or use any other designs or logos in conjunction with the AVID Trademarks; or (v) use any AVID Trademarks in connection with any product or service other than the AVID Products and Services in accordance with this Agreement.

(d) All use of the AVID Trademarks by Client or an AVID Member Site will include the appropriate trademark symbol and will be in the following form, as appropriate: [AVID Trademark]® or [AVID Trademark]™. All literature and materials printed, distributed or electronically transmitted by Client or an AVID Member Site and containing any AVID Trademarks will include the following notice, as appropriate: "[AVID Trademark] is a [registered] trademark of AVID Center."

(e) Use by Client or any AVID Member Site of any AVID Trademarks on any product or other item in order to promote the AVID Products and Services shall be subject to AVID Center's prior written approval. Any such uses of AVID Trademarks approved by AVID Center shall be subject to the terms and conditions of this Agreement.

3.4 Ownership. As between the parties, AVID Center shall solely own all right, title and interest, except as licensed to Client hereunder, in and to the AVID Products and Services, AVID Trademarks, and AVID Materials, and any and all modifications, enhancements and derivative works thereof, and all intellectual and proprietary rights related thereto ("Intellectual Property Rights"). In addition, AVID Center shall own any and all suggestions, comments and feedback provided by Client concerning improvements or modifications of any AVID Products and Services (collectively, "Feedback") and AVID Center shall have the right to use, in any manner and for any purpose whatsoever, any and all Feedback. Client agrees to assign and does hereby irrevocably assign to AVID Center all right, title and interest that Client may acquire in and to any and all AVID Products and Services, AVID Trademarks, AVID Materials, and Feedback and all Intellectual Property Rights therein.

3.5 Equitable Relief. Client acknowledges and agrees that AVID Center will be irreparably harmed and money damages would be an inadequate remedy in the event of a breach of this Article III. Client therefore agrees that, in the event of such a breach, in addition to all other available remedies, AVID Center shall be entitled to equitable relief, including without limitation an order of specific performance and/or temporary, preliminary and permanent injunctive relief.

Article IV. Client's Obligations.

4.1. Infringement by Third Parties. Client shall notify AVID Center of any infringement of any of AVID Center's Intellectual Property Rights of which Client becomes aware. AVID Center shall have the sole right, but not any obligation, to take legal action to enforce such rights and Client agrees to cooperate with AVID Center in any such action and provide all information and assistance reasonably requested by AVID Center at AVID Center's expense.

4.2. Compliance with Laws. Client shall at all times comply with all applicable laws and regulations in its use of the AVID Products and Services.

4.3. Data Collection. During the Term, Client shall provide to AVID Center via a designated secure web portal Site Data and Student Data (collectively, "Data") specified by AVID Center. Client shall collect Data in accordance with applicable privacy laws, including without limitation the federal Family Educational Rights and Privacy Act (FERPA). AVID Center shall maintain in confidence all personally identifiable student information or information that is included in Data that it receives from Client. Client may withhold, revise, and/or edit confidential data, such as student names, Social Security Numbers and any other information the disclosure of which would violate state or federal law. AVID Center agrees not to use any Data in a manner that would violate, or cause Client to violate, any applicable provision of FERPA.

4.4. Proprietary Information.

(a) Confidentiality. Client shall hold and maintain all Proprietary Information provided by, or otherwise obtained from, AVID Center in strict confidence and not use or disclose such information to any third party other than to its employees and contractors who have a need to know such information, except to the extent necessary to exercise the rights granted, and perform its obligations, under this Agreement. Client will safeguard all Proprietary Information using the same precautions it uses to protect its own confidential information, but shall in no event exercise less than a reasonable degree of care. Client shall ensure compliance of AVID Member Sites with the obligations in this Section 4.4 and shall be responsible for any AVID Member Site's breach of such obligations.

(b) Exceptions. The restrictions set forth in Section 4.4(a) shall not apply with respect to information which: (i) is already known by Client at time of disclosure; (ii) becomes, through no act or fault of Client or any AVID Member Site, publicly available; (iii) is rightfully received by Client from a third party on a non-confidential basis; or (iv) is independently developed by Client without reference to any Proprietary Information. Notwithstanding Section 4.4(a), Client may disclose Proprietary Information pursuant to a lawful requirement or request of a governmental entity or agency to the minimum extent required, provided that, to the extent permitted by applicable law, Client first notifies AVID Center of such requirement or request and Client cooperates with AVID

Center in seeking a protective order or contesting such required disclosure.

Article V. Compensation.

5.1. Invoicing and Payment. AVID Center will invoice Client the amount stated in the Quote/Order or Subsequent Quote/Order, as the case may be, upon execution of the Quote/Order or Subsequent Quote/Order, and Client shall pay to AVID Center the full invoiced amount within thirty (30) days following Client's receipt of the invoice.

5.2. Taxes. Client shall be responsible for the payment of any applicable sales or use taxes or any value added or similar taxes payable with respect to the AVID Products and Services provided by AVID Center or arising out of or in connection with this Agreement.

5.3. No Right of Offset. Client shall have no right to offset any amount or claim against amounts payable to AVID Center hereunder.

Article VI. Representations and Warranties; Warranty Disclaimer.

6.1. Representations and Warranties. Each party represents and warrants to the other party that its execution and delivery of this Agreement, and its performance of this Agreement, (i) are within its power and authority; (ii) do not require any consent or other action by and in respect of or filing with any third party or governmental body or agency; and (iii) do not, and will not, violate or conflict with or constitute a default under any applicable law, regulation, or published interpretive guidance or ruling.

6.2. Warranty Disclaimer.

(a) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.1., NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND EACH PARTY DISCLAIMS ALL OTHER WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

(b) AVID CENTER DOES NOT WARRANT THAT THE AVID PRODUCTS AND SERVICES WILL MEET CLIENT'S OR ANY AVID MEMBER SITE'S REQUIREMENTS AND AVID CENTER DOES NOT MAKE ANY WARRANTY WITH RESPECT TO CLIENT'S OR ANY AVID MEMBER SITE'S USE OR INABILITY TO USE ANY OF THE AVID PRODUCTS AND SERVICES OR THE RESULTS GENERATED FROM THE USE OF ANY OF THE AVID PRODUCTS AND SERVICES.

Article VII. Limitation of Liability.

7.1. Exclusion of Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY ARISING OUT OF THIS AGREEMENT UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, INCLUDING TORT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, BREACH OF CONTRACT OR BREACH OF WARRANTY, FOR (a) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES; OR (b) THE COST OF PROCURING SUBSTITUTE GOODS, SERVICES, TECHNOLOGY OR RIGHTS.

7.2. Maximum Liability. NOTHWITHSTANDING ANYTHING IN THIS AGREEMENT OR OTHERWISE, AVID CENTER SHALL HAVE NO LIABILITY FOR DAMAGES IN EXCESS OF THE AGGREGATE AMOUNT PAID BY CLIENT HEREUNDER AND CLIENT SHALL HAVE NO LIAIBLITY FOR DAMAGES IN EXCESS OF THE AGGREGATE AMOUNT PAID OR PAYABLE BY CLIENT HEREUNDER WITH RESPECT TO THE QUOTE/ORDER OR SUBSEQUENT QUOTE/ORDER GIVING RISE TO LIABILITY.

7.3. Exceptions. THE EXCLUSIONS OF DAMAGES AND LIABILITY LIMITATIONS IN SECTIONS 7.1 AND 7.2 SHALL NOT APPLY TO ANY BREACH OF CLIENT'S OBLIGATIONS UNDER ARTICLE III OR SECTION 4.4 OR ANY VIOLATION OR INFRINGEMENT OF AVID CENTER'S INTELLECTUAL PROPERTY RIGHTS. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING A FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

Article VIII. Termination.

8.1. By AVID Center. AVID Center may terminate this Agreement in its entirety or with respect to one or more AVID Member Sites in the event of Client's material breach of this Agreement, which is not fully cured within thirty (30) days following AVID Center's notice of the breach. In the event Client's breach is not cured, AVID Center shall notify Client of its election to terminate this Agreement or, if termination is limited to one or more AVID Member Sites, AVID Center shall notify Client of the AVID Member Sites so terminated.

8.2. By Client. Client may terminate this Agreement for any reason, or no reason, upon thirty (30) days' prior written notice to AVID Center.

8.3. Effect of Termination. Upon termination or expiration of this Agreement or with respect to termination of one or more AVID Member Sites, (a) the licenses granted to Client hereunder, or the rights granted hereunder with respect to the terminated AVID Member Sites, shall automatically terminate and all rights shall revert to AVID Center; (b) Client shall immediately discontinue use of the AVID Products and Services and cease using the AVID Materials, AVID Methodologies, and AVID Trademarks in all AVID Member Sites following termination or expiration of this Agreement, or, in the case of termination of one or more AVID Member Sites, in the terminated AVID Member Sites; (c) Client shall pay to AVID Center all unpaid amounts that are due and payable hereunder and shall remain liable for its obligations or other actions that accrued or occurred prior to the date of termination or expiration; and (d) Client shall promptly return to AVID Center all AVID Materials and Proprietary Information (including copies) in its possession or control following termination or expiration of this Agreement.

8.4. Survival. All accrued rights to payment and the parties' respective rights, obligations and duties under Articles I, VI, VII, and VIII and Sections 3.4, 3.5, 4.1, 4.4, and 5.1 shall survive expiration or any termination of this Agreement.

Article IX. General Provisions

9.1. Independent Contractors. The relationship between the parties is that of independent contractors and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

9.2. Cumulative Remedies. All rights and remedies conferred herein shall be cumulative and in addition to all of the rights and remedies available to each party at law, equity or otherwise.

9.3. Governing Law/Venue. This Agreement shall be governed by and interpreted under California law, without regard to its conflict of laws provisions, and, except as provided in Section 9.4, the state and federal courts located within the County of San Diego, California shall have the exclusive

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jurisdiction over all disputes and causes of action relating to this Agreement.

9.4. Dispute Resolution.

(a) Before initiating any legal action, the parties will endeavor to settle any dispute, controversy or claim arising out of or relating to this Agreement or a party's performance or lack of performance hereunder (a "Dispute") by mediation conducted by JAMS, Inc. ("JAMS") in San Diego, California. The requesting party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs.

(b) If the Dispute is not resolved within sixty (60) days following the request for mediation, the Dispute shall be resolved by final and binding arbitration in accordance with the JAMS Streamlined Arbitration Rules & Procedures then in effect (the "Rules"), except as modified by this Agreement. The arbitration will be conducted by one arbitrator approved by both parties; provided, however, if the parties fail to approve the arbitrator within ten (10) days after the written demand for arbitration, then either party to the dispute may request that JAMS select the arbitrator in accordance with the Rules. The final decision of the arbitrator shall include the dollar amount of the award to such party, if any, and the findings of fact and conclusions of law on which it is based shall be furnished to the parties in writing and shall be binding upon the parties. Judgment upon the arbitration award may be entered in any court having jurisdiction thereof.

9.5. Attorneys' Fees. The prevailing party in any legal action or proceeding related to this Agreement shall, in addition to all other remedies, be entitled to an award of its attorneys' fees.

9.6. Force Majeure. Neither party shall be liable for nonperformance or any delay caused by an event reasonably beyond its control including, but not limited to, wars, acts of terrorism, compliance with laws or regulation (including, without limitation, those related to infringement), fires, floods, earthquakes or any Act of God or any law, proclamation, regulation, ordinance or other act or order of any court, government or governmental agency.

9.7. Severability. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect and be enforceable.

9.8. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered, one business day following delivery by a nationally recognized overnight courier with tracking capabilities, or three business days following deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested, to the address of the party to be notified set forth in the Quote/Order or a Subsequent Quote/Order. Notice of change of address shall be given by written notice in the manner set forth in this Section 9.8.

9.9. Waiver. The waiver by either party of any breach or failure to require performance by the other party shall not constitute the waiver of any other or subsequent breach or diminish the right to require such performance in the future.

9.10. No Third-Party Beneficiaries. Nothing in this Agreement shall confer upon any person or entity other than the parties and their respective successors or permitted assigns, any rights, obligations, or remedies hereunder (whether as a third-party beneficiary or otherwise).

9.11. No Assignment. Client may not assign any of its rights or delegate any of its obligations under this Agreement without AVID Center's prior written consent and any purported assignment in the absence of such consent shall be null and void.

9.12. Amendment. No amendment or modification of this Agreement shall be binding, unless it is in writing and signed by both parties.

9.13. Headings; Construction. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement. Each party agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

9.14. Entire Agreement. This Agreement is the entire agreement between the parties relating to the subject matter hereof, and all quotes, communications, understandings and agreements relating to the same subject matter are merged into, and superseded by, this Agreement.

9.15. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. Delivery of a copy of this Agreement bearing a signature by facsimile transmission, by electronic mail or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature.