

**RESELLER AGREEMENT**  
**Between Kings County Office of Education and Softchoice Corporation**

This Reseller Agreement (“Agreement”) is made and entered into as of July 31, 2019, between the Kings County Office of Education, (“COE”) a public agency organized under the laws of California, and Softchoice Corporation, a corporation, organized under the laws of the State of New York, (“Contractor”) for the purpose of implementing a software purchase and license program for the public agencies. Contractor and COE may singularly be identified as “Party” and collectively referred to as “Parties”.

**RECITALS**

**WHEREAS**, COE wishes to obtain software licenses from Microsoft for the use and benefit of its faculty, staff (and students); and

**WHEREAS**, COE wishes to enter into a Volume Licensing Agreement with Microsoft for Volume Licensing Agreement software licenses; and

**WHEREAS**, Pursuant to the Volume Licensing Agreement with Microsoft, COE is required by Microsoft to retain an authorized reseller (“Reseller”) for the procurement of the software licenses and licensing support; and

**WHEREAS**, COE further desires the assistance of a Reseller in the implementation and administration of license procurement and licensing support; and

**WHEREAS**, COE published a Request for Proposal for a Reseller and selected Contractor as the successful candidate; and

**WHEREAS**, Pursuant to Public Contract Code section 20118 and the terms of this Agreement, other public agencies in the State of California may "piggyback" this agreement under the same terms and conditions found herein; and

**NOW THEREFORE, FOR GOOD AND SUFFICIENT CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:**

1. **Purpose of the Agreement:** Contractor shall procure licenses for Microsoft products and provide assistance to COE in support of these purchases.
2. **Definitions:** The following terms, as used herein, shall have the following meanings:
  - a. “Effective Date of the Agreement” shall mean the date when the Agreement has been fully executed by the Parties.
  - b. “Manufacturer” will mean Microsoft Corporation.
  - c. “Piggybacking of Contract” shall mean the ability of a school COE or eligible public agency to participate in the contract pursuant to the provisions of Public Contract Code section 20118.

3. **Documents Incorporated Into this Agreement:** The following documents shall be deemed incorporated and shall be referenced as being part of this Agreement:
  - a. COE's Request for Proposals
  - b. Pricing Schedule
4. **Term of Agreement:** The term of this Agreement shall be for three (3) years, commencing from the Effective Date of the Agreement. The parties may extend this Agreement by an additional two (2) terms of one (1) year each term.
5. **Pricing Information:** Contractor agrees that pricing provided in the Pricing Schedule shall not change for the term of this Agreement. Changes in Manufacturer's product selection are to take effect immediately upon the effective date of the Manufacturer's changes. Other changes to price lists and postings will take effect on the dates set by COE and the Contractor.
6. **Account Manager/Staffing:** Contractor will provide a regularly assigned Account Manager and adequate staffing to service and manage all aspects of the account in a timely and efficient manner.
7. **Account Staff Quality:** Members of the Contractor support team shall be thoroughly trained and experienced in the requirements and processes related to Microsoft agreements, academic licensing programs, related software assurance benefits, and Microsoft products and solutions. At COE's request, Contractor shall provide additional training as needed to ensure adequate support is provided to COE.
8. **Full Scope Software Support:** Contractor shall provide and support the electronic software distribution program for students, faculty, and staff, in support of student option benefits, Office Pro Plus benefit and other qualifying academic licensing benefits.
9. **Microsoft Authorized Reseller:** It shall be a condition of this Agreement that the Contractor is and shall remain a Microsoft-authorized Reseller ("Reseller"). The failure of the Contractor to remain a Microsoft-authorized Reseller shall be a material breach of the Agreement and the COE may terminate the Agreement.
10. **Initial Microsoft Implementation:** Contractor shall execute the numerous enrollment options available from Microsoft. Contractor shall thoroughly review the provisions of the Microsoft agreement, submit an executed Enrollment Agreement and obtain an Enrollment Number, prior to placing an order under this Agreement.
11. **Initial Customer Enrollment:** Contractor shall work closely COE and ensure the required documentation is in place as needed. Contractor shall be responsible for servicing and administering enrollment under the agreement, ensuring prompt processing of enrollment forms, and insuring enrollment conforms to the requirements of the Microsoft agreement.

**12. Piggybacking, E-Rate and K12 Voucher:** Contractor shall be conversant in assisting COE to make contracts or payments under the alternative processes listed below:

- a. *Piggybacking:* Public agencies who elect to participate contractually in the Program through a contract process called "Piggybacking."
- b. *E-Rate:* COE may also attempt to receive further discounting through the E-Rate process. Contractor will assist COE in modifying the Program to reflect the Piggybacking and E-Rate processes. Contractor shall have, at the time this contract is signed, a current USAC Service Provide Identification Number ("SPIN") and agree to keep their SPIN current for each year of the term of this Agreement.

**13. Incidental and Accessory Duties:** Contractor shall perform all other necessary incidental and accessory duties as needed to fulfill its duties under this Agreement.

**14. Indemnity and Warranty Disclaimer:** Each party, as indemnitor, agrees to indemnify, defend, and hold harmless the other party and its affiliates and their respective officers, directors, trustees, agents, servants and employees with respect to all losses, damages, costs, charges, demands and expenses (including attorneys fees), arising out of or resulting from a third-party claim, suit or proceeding based on: (i) such Party's breach of any representation or warranty set forth in this Agreement; or (ii) Any such Party's breach of any obligation under this Agreement. An indemnifying party shall not be required to indemnify any Party who is determined by final judgment to be solely at fault. COE acknowledges that Contractor has no control over the technology of the Manufacturer, and therefore cannot indemnify COE for claims that the software infringes any patent, copyright, trademark, trade secret or other intellectual property right. Contractor will pass through to COE any indemnities provided to Contractor by the Manufacturer, provided that such transfer is permitted by the Manufacturer. COE acknowledges that Contractor is not the manufacturer of the products and the only warranties offered are those that may be offered by the Manufacturer. Contractor shall pass through to COE any warranties provided to Contractor by the applicable Manufacturer, provided that such transfer is permitted by such Manufacturer. In purchasing the products, COE is relying on the Manufacturer's specifications only. CONTRACTOR HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES EITHER EXPRESS OR IMPLIED, IN FACT OR IN LAW, RELATED TO PRODUCTS SOLD UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER DOES NOT AFFECT THE TERMS OF ANY MANUFACTURER'S WARRANTY.

**15. Modification of Agreement:** This Agreement may be modified only by an agreement in writing between the Parties.

**16. Non-Endorsement:** Contractor shall not use COE's name or the Program in marketing products or services to parties not covered by this Agreement in a way which states or implies that COE endorses a particular product or service of the Contractor.

**17. Breach of Agreement:** Any material breach of the terms and conditions of this Agreement by the Contractor, which is not remedied within ten (10) days of receipt of written notice from COE, shall allow COE to terminate the agreement for cause.

**18. Termination of Agreement:** COE reserves the right to cancel the Agreement for its convenience, upon ninety (90) days notice to Contractor. In such event, the contractor's recourse shall be limited to its actual costs and in no instance shall damages include lost profits or consequential damages.

**19. Proof of Insurance:**

a. Contractor shall obtain Commercial and General Liability Insurance with a per occurrence minimum limit of \$1,000,000 and \$2,000,000, aggregate.

b. Within ten (10) days of the execution of this Agreement, and prior to commencing work under this Agreement, Contractor shall have obtained all insurance and endorsements for such insurance and delivered them to COE in duplicate for approval by COE. Endorsements and insurance policies shall not be canceled or reduced in required limits of liability or amounts of insurance, without Contractor providing COE at least thirty (30) days' written notice of any such cancellation or reduction. Endorsements shall state in particular, those insured, location and operation to which insurance applies, expiration date and cancellation and reduction notice.

**20. Limitation of Liability:** Neither party will be liable to the other for special, punitive, indirect, incidental or consequential damages including, but not limited to, loss of or damage to data, loss of anticipated revenue or profits, work stoppage or impairment of assets, provided however that for the avoidance of doubt, damages arising in connection with obligations of indemnification hereunder shall be deemed to be direct damages for which recovery shall not be barred by this paragraph. COE AGREES THAT CONTRACTOR'S TOTAL AND AGGREGATE LIABILITY FOR ANY LOSS, DAMAGE, COST OR EXPENSE SUFFERED OR INCURRED BY COE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY PRODUCT IS HEREBY LIMITED TO THE DOLLAR AMOUNT PAID BY COE FOR THE PRODUCT GIVING RISE TO THE CLAIM.

**21. Provisions Required by Law:** Each and every provision of law and clause required to be inserted in this Agreement shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though it were included herein, if though mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party to the Agreement shall forthwith be physically amended to make such insertion or correction.

**22. Waiver:** Unless otherwise agreed to in writing, neither party's waiver of the other's breach of any term or condition contained in this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other term or condition of this Agreement.

**23. Notice and Service:** All notices from one party to the other under this Agreement shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. All notices shall be delivered or sent to the parties at their respective addresses or numbers shown below as a party may designate by prior notice, in accordance with this provision to the other party. Notice shall be by both email and hard copy in the United States mail.

**If to Contractor:**

Softchoice Corporation  
173 Dufferin St. Suite 200  
Toronto ON M6K 3H7 Canada  
Attn: Legal Department

**If to COE:**

Edward Bonham, Chief Technology Officer  
1144 W. Lacey Blvd.  
Hanford, CA 93230  
[edwardb@kingscoe.org](mailto:edwardb@kingscoe.org)

**24. Assignment:** This Agreement is not assignable by the Contractor without COE's prior written consent, which consent will not be unreasonably withheld. The Assignee shall first provide COE a written notice that it will agree to be bound by the terms and conditions of this Agreement. Any purported assignment of this in violation of this Section shall be null and void and shall constitute a material breach of this Agreement.

**25. Arbitration of Disputes:** If any dispute should arise under this agreement, it is agreed that COE and Contractor shall meet first to review and negotiate in good faith their differences. If the parties cannot resolve their dispute informally, the dispute shall be determined by binding arbitration, administered by Judicial Arbitration and Mediation Service ("JAMS") in Los Angeles, California, pursuant to its Comprehensive Arbitration Rules and Procedures or Streamlined Arbitration Rules (as determined pursuant to these rules according to the amount in controversy.) An action to enforce the arbitration ruling may be brought in any court in California having jurisdiction.

**26. Governing Law and Venue:** This Agreement shall be governed by the laws of the State of California and all disputes shall be and venue shall be exclusively in the federal and or state courts located in Kings County, California.

**27. Integration Clause:** This Agreement, (including all of the documents attached hereto or specified herein), represents the entire agreement of the Parties and supersedes all previous understandings and agreements between the parties, whether oral or written.

**28. Severability:** Every provision of this Agreement is intended to be severable. If any term or provision hereof is declared or held illegal or void, in whole or in part for any reason

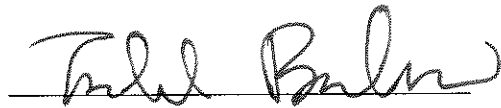
whatsoever, such illegality or invalidity shall not affect the validity or enforceability of the remainder of the Agreement, and such provision shall be deemed amended or modified to the extent, but only to the extent, necessary to cure such illegality or invalidity.

29. **Execution in Counterpart:** This Agreement may be executed in counterpart.

30. **Governing Board Approval:** This Agreement is subject to approval by the Governing Board of the Kings County Office of Education, and does not become effective until and unless such approval is obtained.

Signed by each party's authorized representative:

**KINGS COUNTY OFFICE OF EDUCATION**



By: Todd Barlow

Title: SUPERINTENDENT

Date: July 7, 2019

**SOFTCHOICE CORPORATION**

*Linda Millage*

By: Linda Millage

Title: VP Finance

Date: July 31, 2019



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Final Audit Report

2019-07-31

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