

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is made and entered into as Of October 26, 2020, by and between **AMERICAN INDIAN MODEL SCHOOLS and affiliate organizations ("Client")** and **D&A COMMUNICATIONS INC., ("Contractor" or "D&A")**.

Whereas the Contractor seeks to provide certain professional services and the Client wishes to retain the Contractor to perform such professional services on the terms set forth.

1. Professional Services.

(a) Capacity. The Client hereby retains the firm as an Independent Contractor of the Client on a non-exclusive basis with respect to the business of the Client (the "Business") during the Term, and the Contractor hereby accepts such position, all effective as of the date of this Agreement and upon the terms and subject to the conditions set forth herein.

(b) Duties. During the Term, the Contractor shall perform such marketing and communications professional services as may be reasonably specified from time to time by the Client and agreed by Contractor in writing, subject to the requirement that the Contractor shall comply at all times with all applicable laws. Client shall be responsible for compliance with all applicable law with respect to the information provided to Contractor and with respect to communications approved by Client for dissemination by Contractor. Client shall also be responsible for reviewing all publicity, press releases, press documents and other materials prepared by Contractor to confirm that all representations, direct or implied, are supported by objective data and evidence then possessed by Client, and to confirm and approve the accuracy of the descriptions and depictions of the products and services of Client and its competitors. The Professional Services may include, without limitation, the services as fully described in the attached Exhibit A. In connection with the rendering of these services, the Contractor shall provide to the Client; (i) upon the Client's reasonable written request, all information, documents and other materials relating to the Professional Services; and (ii) such other oral and/or written reports regarding the services as the Client may from time to time reasonable request.

(c) Availability; Location. During the Term, the Contractor shall make themselves reasonably available to render the Professional Services on such business days and times to be requested by the Client and approved by the Contractor, but which shall ensure that Client is able to reach Contractor and Contractor provides prompt and timely service to Client.

(d) Compensation; Reimbursement of Expenses. The Client shall pay in accordance to the payment terms as outlined in Exhibit A. Such monthly payments to Contractor shall be payable per month, on or about the first day of each month.

2. Confidentiality; Client Property.

(a) Confidential Information.

(i) “Confidential Information” shall mean any information revealed by or through a party or by a representative of the party (the “Disclosing Party”) (including information disclosed to and from its legal counsel and to the Receiving Party in order to facilitate legal advice or helping to achieve a specific legal goal) to the other (the “Receiving Party”), whether tangible or intangible, and regardless of how stored, compiled, or memorialized, whether physically, electronically, graphically, photographically, in writing or by some other means, that is (i) marked as "confidential," “proprietary” or with some similar indication; (ii) is advised by the Disclosing Party to be confidential; or (iii) which the parties would reasonably construe to be confidential information under the circumstances. Specifically, Company’s products and related information, including documentation, data models, databases and other artifacts, are the Confidential Information of Company.

(ii) Except for where such disclosure is authorized by Client, Contractor shall keep in strict confidence, and shall not, directly or indirectly, at any time during or after the Term, disclose, furnish, disseminate, make available or, except in the course of performing it’s his duties hereunder, use any Confidential Information.

(iii) Upon the termination of the Agreement, or sooner if requested by the Client, the Contractor shall return to the Client, in good condition, all property of the Client, including, without limitation, the originals and all copies of any materials which contain, reflect, summarize, describe, analyze or refer or relate to any items of information listed in this Agreement. Contractor shall be entitled to retain copies of such property, provided Contractor adheres to the confidentiality obligations hereof.

3. Independent Contractor Status. The Contractor’s relationship to the Client during the Term is and will at all times be and remain that of an independent contractor and contractor, and not as an employee or agent. Client acknowledges that Contractor is engaged in a distinct business separate and apart from the business of Client. Client further acknowledges that Contractor and its agents possess a unique set of skills, training and experience. The Contractor does not, by virtue of this Agreement, acquire any authority, whether actual, express, implied or apparent, to bind or otherwise obligate the Client in any capacity, and the Contractor shall not make any commitments for or on behalf of the Client, or bind or purport to bind the Client, in any manner unless and only to the extent expressly authorized in writing by the Client or as described in Exhibit A. The Contractor acknowledges and agrees that he shall not be treated as an employee of the Client for purposes of federal, state, local and foreign income tax withholding, and unless otherwise specifically provided by law, for purposes of the Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act or any Worker’s Compensation law of any state or country and for purposes of benefits provided to employees of the Client under any employee benefit plan. The Contractor also acknowledges and agrees that ithe is required to pay any applicable taxes on the fees paid to him by the Client pursuant to this Agreement. The Client shall not

provide worker's compensation coverage for the Contractor and it is the responsibility of the Contractor to secure any such coverage if desired or required to meet the requirements of applicable law. The Contractor further acknowledges and agrees that it shall not be entitled to participate in any plans, arrangements or distributions by the Client pertaining to any bonus, stock option, profit sharing, 401(k) plan, paid time off, flex spend, insurance or other benefits for the Client's employees.

4. Representations. The Contractor hereby represents and warrants to the Client that (i) it she has the capacity and authority to enter into this Agreement, (ii) it will render the Professional Services in a workman-like manner, (iii) at all times while it is rendering any Professional Services, it will conduct itself herself in a professional manner and in accordance with all applicable laws, and (iv) at all times while it is rendering any Professional Services, it will not negligently or willfully act in a manner that Contractor knows reflects adversely upon (A) the business integrity or goodwill of the Client or (B) the image or reputation of the Client and/or any of the Client's products.

5. Term and Termination. Either party may terminate this Agreement at any time and without cause or reason upon thirty (30) days written notice to the other. Either party may

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terminate this Agreement immediately in the event the other party materially breaches this Agreement for cause by providing written notice to the other party. Upon termination Contractor will be paid in full for all fees and expenses incurred to the date of termination. The period from the effective date of the Agreement until it is terminated, is sometimes referred to herein as the "Term." If the effective date of the Agreement occurs other than on the first day of the applicable calendar month, or if the termination of the Agreement occurs

other than on the last day of the applicable calendar month, then the fee payable to Contractor pursuant to Section 1(d), above for such month(s) shall be prorated accordingly.

7. Assignment. This Agreement shall insure to the benefit of, and shall be binding upon, the Client and its successors and assigns, and Contractor may not assign it.

8. Indemnification. The Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Contractor's performance of professional services under this Agreement and that of its subcontractors or anyone for whom the Contractor is legally liable.

,m,,m,mm,m,m,mm,mmm,m,mm,,mmm,,m,mm,mm,m,the Contractor, its officers, directors, employees and subcontractors (collectively, Contractor) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent

caused by (i) the Client's acts in connection with the Project and the acts of its contractors, subcontractors or Contractors or anyone for whom the Client is legally liable,

9. Intellectual Property.

- A. Pre-Existing. AIMS retains all rights of any nature in intellectual property, including without limitation, any patent, inventions, industrial design, trademark, copyright, proprietary information, design, process, method, technique, procedure, manuals and know-how (collectively, "Intellectual Property") that the AIMS or its subsidiaries or affiliates owned before the Commencement Date ("Pre-Existing Intellectual Property. Each Party understands and agrees that no title to or ownership of a Party's Pre-Existing Intellectual Property, or any part thereof, is transferred to the other Party as a result of this agreement. Contractor retains all rights of any nature in Intellectual Property that Contractor owned before the Commencement Date, as well as all media lists.
- B. Newly Created. AIMS will retain ownership rights in any Intellectual Property created, conceived or developed in connection with the Project ("Newly Created Intellectual Property"), and grants a fully paid up, worldwide, non-exclusive, non-sub licensable license to use that Newly Created Intellectual Property in connection with the Project. In the event that (1) one Party modifies or creates derivative works from the other Party's Intellectual Property such that it is difficult to identify separately the Newly Created Intellectual Property from the other Party's Pre-Existing Intellectual Property, or (2) the Parties jointly create or conceive of the Newly Created Intellectual Property in connection with the Project, the Parties agree that the conditions of ownership and use of the Newly Created Intellectual Property Belong to AIMS.
- C. New Trademarks and Website Domains. Contractor agrees that it shall not do any of the following in connection with the Project unless AIMS gives its prior written consent: (1) use, register or attempt to register any trademark or service mark, (2) register or attempt to register a website domain name, or (3) host, operate or maintain a website (or cause or permit another party to do so).
- D. Third-Party Services. Contractor agrees that prior to entering into an agreement with a third party for the performance of any services in connection with the Project, the contractor will receive approval from AIMS regarding ownership and/or license rights in any Intellectual Property to be developed, created or generated by the third party in connection with the Project.

- E. **Acknowledgments.** Subject to the terms, conditions and limitations on use of Intellectual Property contained herein, each Party agrees that the other Party's contributions to the Project will be appropriately credited in any written publications or public disclosures relating to the Project.

Notwithstanding anything to the contrary, Contractor shall have the right to use all materials and work product in case studies, marketing efforts and other publicity and self-promotional materials, provided that Contractor does not disclose Client's Confidential Information when doing so and provided that Client shall have a right to demand Contractor cease using material and work product developed for Client if Client reasonably believes Contractor is not using it in a manner consistent with Client's needs and reputation.

10. **Modifications**. No change, amendment or modification of this Agreement shall be valid unless it is in writing specifically referencing this Agreement and signed by all the parties hereto. No waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom it is sought to be enforced. The failure of any party at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of the same or any other condition, promise, agreement or understanding at a future time.

11. **Severability**. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall be interpreted so as reasonably to affect the intent of the parties hereto. The parties hereto shall use their reasonable best efforts to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

12. **1. Governing Law**. This Agreement is governed by and construed and enforced in accordance with the laws of the State of California, without regard to principles of conflicts of law.

13. **2. Descriptive Headings**. The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

14. **3. Notices**. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given when delivered in person, when dispatched by electronic facsimile transfer, or by secure electronic transfer such as a secured email (if confirmed in writing by mail simultaneously dispatched), one business day

after having been dispatched by a nationally recognized overnight courier service or three business days after having been deposited, postage prepaid, certified or registered mail, return receipt requested, in the United States Mail to the appropriate party at the address :

(i) If to the Client: **American Indian Model Schools**
171 12th Street Oakland, CA 94607

(ii) If to the Contractor: **Davis & Associates Communications, Inc.**
1388 Sutter Street, Suite
1200 San Francisco,
94109

15. Construction. Where the context so indicates, the masculine shall include feminine and neuter, the singular shall include the plural and the plural shall include the singular. When a reference is made in this Agreement to a Section, such reference is to a Section of this Agreement unless otherwise indicated. The parties hereto have been represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, hereby waive, with respect to this Agreement, the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

16. Further Assurances. Each party hereto shall cooperate and take such action as may be reasonably requested by another party hereto in order to carry out the provisions and purposes of this Agreement and the transactions contemplated by this Agreement.

17. Entire Agreement. This Agreement contains all of the promises, agreements, conditions, understandings, warranties and representations between the parties hereto with respect to the subject matter hereof. This Agreement is intended by the parties hereto to be an integration of any and all prior agreements or understandings (other than those identified above), oral or written, with respect to the subject matter hereof.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

19. Force Majeure. Contractor shall not be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, acts of government, acts of war or terrorism, shortage of materials or supplies, failure of transportation or communications or of suppliers of goods or services, or any other cause beyond the reasonable control of Contractor.

1. Limitation of Liability: EXCEPT WHERE CAUSED BY ONE PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR

CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF GOODWILL, LOSS OF REPUTATION OR LOSS OF DATA, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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3. This Agreement and any claims or disputes relating thereto shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict/choice of laws principles. The parties hereby expressly agree that all disputes arising under this Agreement shall be resolved exclusively by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be before a single arbitrator selected pursuant to the AAA Commercial Arbitration Rules and shall take place in San Francisco.

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement as of the date and year first above written.

CLIENT:

CONTRACTOR:

AMERICAN INDIAN MODEL SCHOOLS

**Davis&Associates
Communications, Inc.**

By:

By:

Maya Woods-Cadiz, Superintendent

Darolyn Davis, President & CEO

Exhibit A

PROFESSIONAL SERVICES AGREEMENT

Term: December 1, 2020 – September 30, 2021 (10 months) This agreement spans two fiscal and programmatic years. The parties will meet in June of 2021 to review a potential renewal/ extension of this agreement.

Fee Schedule: \$ 10,000/month (not to exceed 10 months).

The total not-to-exceed contract amount is \$100,000.

All payments will be due and payable within 30 days from the date of invoice.

Services: Strategic marketing and communications services to support the goals of the Client, specifically:

Expenses: Client shall reimburse Contractor for any reasonable out-of-pocket expenses Contractor incurs as necessitated by this Agreement, including, without limitation: proportional costs for subscription services, non-proprietary database access, financial terminals, travel, news release distribution services, news monitoring services, focus group participants, , bridged conference calls/video links/hosting, photography, postage, overnight mail, and courier services. Contractor will have the right to require that Client provide such funds to Contractor in advance of Contractor incurring any specific expense. All expenses will be due within thirty (30) days of invoice, except where such invoice included an earlier date. Contractor will have the right to make purchases on behalf of Client, provided Client has approved such purchases. Contractor shall be liable for payments to such third-party vendors only to the extent Contractor has first been paid by Client for such purchases, under the principle of sequential liability. Contractor shall have the right to require that Client provide such funds to Contractor in advance of Contractor undertaking commitments on Contractor's behalf.

Any hours above the monthly retainer fee will be charged at an hourly rate. Prior authorization will be requested before working additional hours. Any task requested outside of the scope of work will be billed separately by the hour. All changes in scope must be in writing. or in collaboration with the Client, the scope of work will be reduced to accommodate additional tasks.

- **Contractor will develop a strategy that maximizes the usage of all media including social media, AIMS website, print and television to publicize AIMS educational accomplishments and student successes. This will include branded collateral that chronicles the story of AIMS for the media, funders, and other members of the community.** Build Mailing List of Important External Partners
Contractor will assist with internal marketing and communication during Marketing and Communication Coordinators leave.

Client Initials: _____

Contractor Initials: _____

SEE ATTACHMENT EXHIBIT A