

EXHIBIT I
DPS Professional Services Agreement

DPS PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made and entered into this ____ day of _____, 20____ (the "Effective Date"), by and between the **DAYTON SCHOOL BOARD OF EDUCATION**, whose address is 115 S Ludlow St, Dayton, Ohio 45402 (the "District") and [_____] whose address is [_____] (the "Service Provider").

SECTION 1. TAX ID. The Service Provider's federal employer I.D. number or social security number is as follows: [_____].

SECTION 2. GENERAL DESCRIPTION OF PROFESSIONAL SERVICES. Service Provider agrees to provide services in connection with [_____], all of which are more fully described in the statement of work incorporated herein by reference (the "Statement of Work").

SECTION 3. STANDARD OF CARE. The Service Provider agrees to perform the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. The Service Provider agrees to perform the Services in accordance with any applicable federal, state, or local law or regulation. The Service Provider warrants that the Service Provider is professionally qualified to perform the Services and is licensed by all public entities having jurisdiction over the Service Provider, to the extent that such licensing is required.

SECTION 4. TERM; COMMENCEMENT AND COMPLETION. This Agreement shall commence as of the Effective Date and shall continue thereafter until the Completion Date (as defined in the Statement of Work), unless sooner terminated pursuant to Section 12. The Service Provider shall perform the services with due and reasonable diligence and complete all services set forth herein in accordance with the respective schedules set forth in the Statement of Work (the "Completion Dates"). If the Services are delayed beyond the Completion Dates as a result of:

(a) actions or inaction of Service Provider, then Service Provider shall be considered to be in default of this Agreement and District may, at its sole discretion, in addition to any other remedies provided at law or in equity, terminate this Agreement, withhold outstanding compensation, and/or seek reimbursement for cost and time lost as a result of Service Provider's inability to complete the Services by the agreed to Completion Date; or

(b) Force Majeure Events, then the Service Provider shall be entitled to additional fees in accordance with the hourly rates set forth on the Statement of Work commensurate with additional time required to complete the Services beyond the Completion Dates. For purposes of this Agreement, "Force Majeure Events" means any material changes in the Statement of Work by District, or by labor disputes, fire, unavoidable casualties or other causes beyond the Service Provider's control.

SECTION 5. FEES AND REIMBURSABLE EXPENSES.

(a) The District agrees to pay to the Service Provider and the Service Provider agrees to accept from the District, as full and complete payment for the Services performed by the Service Provider, compensation in the amount of the fees set forth on The Statement of Work attached hereto and incorporated herein by reference. The fees for the Services are based on the hourly rates set forth on The Statement of Work which includes the Service Provider's expenses, taxes, overhead and profit including, without limitation, employees' wages, salaries, benefits and expenses of its employees, as well as their federal and state income tax withholding amounts, social security, federal and state unemployment taxes, and any similar payroll taxes.

(b) The District agrees to pay to the Service Provider all actual, documented and reasonable reimbursable expenses that have been approved in advance in writing by the District up to \$[_____], which are invoiced at Service Provider's cost and include, but are not limited to, printing/reproductions, special materials/services, photography, mileage and travel expenses, long distance/phone charges, fax transmissions and delivery/postage services.

(c) In the event the District substantially changes the Statement of Work, then the Service Provider shall provide an estimate of the fees for such additional Services based on the hourly rates set forth on The Statement of Work and the District and the Service Provider shall execute an Addendum to this Agreement reflecting the new, not to exceed, amount of fees for the new or expanded Services.

SECTION 6. PAYMENT. All invoices with respect to the Services that have been completed satisfactorily in accordance with the terms of this Agreement will be paid by the District within thirty (30) days of submittal. If the District questions any portion of the invoices and delays in paying a portion pending resolution of the questions, the undisputed amount requested for payment will be paid by the District in accordance with the terms hereof. In the event of and during any pending dispute between the parties regarding

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their respective rights and obligations hereunder including, but not limited to, questions regarding any portion of the invoices and resulting delays in payment of that portion pending resolution of such questions, unless instructed otherwise in writing by the District, the Service Provider shall continue to furnish services to the District, and the District shall continue to pay all undisputed amounts in accordance with the terms hereof.

SECTION 7. INTELLECTUAL PROPERTY. All intellectual property rights, (collectively, “Intellectual Property Rights”) in and to all documents, work product and other materials that are delivered to the District under this Agreement or prepared by or on behalf of the Service Provider in the course of performing the Services (collectively, the “Deliverables”) shall be owned exclusively by the District. The Service Provider agrees, and shall cause its employees and subcontractors (collectively, “Service Provider Personnel”) to agree, that with respect to any Deliverables that may qualify as “work made for hire” as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a “work made for hire” for the District. To the extent that any of the Deliverables do not constitute a “work made for hire,” the Service Provider hereby irrevocably assigns, and shall cause the Service Provider Personnel to irrevocably assign to the District, in each case without additional consideration, all right, title and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein.

SECTION 8. INSURANCE.

(a) Casualty Insurance. Except when a modification is requested in writing by the Service Provider and approved in writing by the District, the Service Provider shall carry and maintain at Service Provider’s cost, with companies authorized to do business in Ohio, all necessary liability insurance (which shall include as a minimum the requirements set forth below) during the term of this Agreement naming the District as an additional insured:

- (i) Workers’ Compensation and employer’s liability insurance to the fullest extent required by applicable law;
- (ii) Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts:

(A) General Aggregate Limit: \$2,000,000;

(B) Each Occurrence Limit: \$1,000,000 each occurrence; and

- (iii) Commercial automobile liability coverage, including non-owned and hired, in an amount not less than \$1,000,000.

(b) Professional Liability Insurance. The Service Provider shall maintain insurance to protect against claims arising from the performance of the Service Provider’s Services caused by any negligent acts, errors or omissions for which the Service Provider is legally liable (“Professional Liability Insurance”). Such Professional Liability Insurance shall be in an amount not less than \$1,000,000 per claim and in the annual aggregate. The Service Provider shall keep such insurance in effect for so long as the Service Provider may be held liable for its performance of the Services. If the Professional Liability Insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date on which the Service Provider commenced to perform the Services. The insurance company issuing the Professional Liability Insurance policy must be authorized to do business in Ohio and have a rating of at least A status as noted in the most recent edition of the Best’s Insurance Reports.

SECTION 9. CONFIDENTIALITY. All non-public, confidential or proprietary information of the District, (collectively, the “Confidential Information”), disclosed by the District to the Service Provider, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential,” in connection with the provision of the Services and this Agreement is confidential, and shall not be disclosed or copied by the Service Provider without the prior written consent of the District. The Confidential Information does not include information that is: (i) in the public domain; (ii) known to the Service Provider at the time of disclosure; or (iii) rightfully obtained by the Service Provider on a non-confidential basis from a third party. The Service Provider shall use the Confidential Information only for the purpose of providing Services under this Agreement. The District shall be entitled to injunctive relief for any violation of this Section.

SECTION 10. INDEMNIFICATION. The Service Provider shall indemnify, hold harmless and, at the District’s request, defend the District, its employees, agents and representatives from and against any and all claims, suits, demands, liabilities, losses, damages, costs and expenses (including the District’s reasonable attorney’s fees) arising out of or resulting from claims for injury to or death of persons or claims for third-party property damage to the extent arising out of or resulting from (i) any actual or alleged negligent acts, errors or omissions of the Service Provider, its agents, employees, contractors (at any tier), sub-contractors in the performance of the Services under this Agreement or (ii) any breach of this Agreement by the Service Provider. The District’s entitlement under the

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foregoing indemnification may be deducted from the Service Provider's compensation then due or thereafter to become due, in addition to any other remedies that the District may have under this Agreement, at law or in equity.

SECTION 11. LIMITATION OF LIABILITY. IN NO EVENT WILL THE DISTRICT BE LIABLE TO THE SERVICE PROVIDER FOR LOST PROFITS, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR OTHER INDIRECT DAMAGES OF ANY KIND, WHETHER THE CLAIM ARISES IN CONTRACT, TORT, OR OTHER LEGAL THEORY.

SECTION 12. TERMINATION OF AGREEMENT; REMEDIES.

(a) This Agreement may be terminated upon 30 days' written notice by either party should the other fail to perform their obligations hereunder. In the event of termination by the Service Provider due to the District's breach, the District shall pay the Service Provider for Services properly rendered to the date of termination plus all unpaid reimbursable expenses. In the event of termination by the District due to the Service Provider's breach, if the cost of completing the Services by another service provider is greater than the amount otherwise payable to Service Provider under this Agreement for the remaining Services, Service Provider agrees to pay the District this difference upon demand.

(b) This Agreement may be terminated by the District without cause upon 60 days written notice to the Service Provider in which event the District shall pay the Service Provider for Services properly rendered to the date of termination.

(c) No remedy conferred upon the District by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Each and every remedy of the District shall be cumulative and shall be in addition to any other remedy given to the District hereunder or now or hereafter existing. Except as otherwise provided in this Agreement, no remedy conferred upon the Service Provider by the terms of this Agreement is intended to be exclusive of any other remedy provided at law or in equity. Except as otherwise provided in this Agreement, each and every remedy of the Service Provider shall be cumulative and shall be in addition to any other remedy given to the Service Provider hereunder or now or hereafter existing.

(d) No delay, omission or forbearance to exercise any right, power or remedy accruing to the District or the Service Provider hereunder shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default hereunder. Every such right, power or remedy may be exercised as often as deemed expedient.

SECTION 13. NON-DISCRIMINATION. The Service Provider represents that the Service Provider is in compliance with all applicable equal employment opportunity requirements under law as required by Section 153.59 of the Ohio Revised Code and any other applicable state or federal laws.

SECTION 14. ANTI-ABUSE OF DRUGS AND ALCOHOL. The Service Provider shall make a good faith effort to ensure that no employee of the Service Provider will purchase, transfer, use or possess, or be under the influence of alcohol or illegal drugs or abuse legally obtained drugs while on or about the District's property or while conducting the Services. Except for the term "employee," terms in this Section are used as defined in Rule 123:1-76 of the Ohio Administrative Code.

SECTION 15. ASSIGNMENT AND THIRD PARTIES. The Services furnished hereunder are personal to the District, therefore, the Service Provider may not assign this Agreement, in whole or in part, to any person or entity without the District's prior written consent. The Service Provider may not subcontract any of the Services under this Agreement without the District's prior written consent.

SECTION 16. WAIVER: Any failure by the District to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and the District may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

SECTION 17. RELATIONSHIP: The Service Provider is an independent contractor to the District in performing the Services under this Agreement and is not an employee, agent, joint-venturer, or partner of the District.

SECTION 18. SEVERABILITY. Any provisions of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.

SECTION 19. COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

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SECTION 20. ENTIRE AGREEMENT; AMENDMENT. This Agreement and its Statement of Work, which is incorporated herein by reference, embody the entire agreement and understanding between the parties, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alternation, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto, except that all terms and conditions contained in a purchase order or other standard or preprinted work authorization issued by the District shall be null and void, even if such document is of later date.

SECTION 21. GOVERNING LAW; DISPUTES. This Agreement shall be governed by the laws of the State of Ohio. If a dispute between the parties arises out of or relates to this Agreement or a Statement of Work, or a breach thereof, then the parties agree to make a good faith effort to settle the issue through direct discussions between the parties prior to having recourse to a judicial forum. However, disputes between the parties that cannot be mutually resolved shall be decided by litigation. Any action with relation to or to enforce any provision of this Agreement shall be brought in a court of competent jurisdiction located in Montgomery County, Ohio.

SECTION 22. NOTICES. Any notice required hereunder shall be sufficiently given to a party when sent to such party at their respect address listed above via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

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

SERVICE PROVIDER:

DISTRICT:

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Signed: _____

Name: _____

Title: _____