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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Tara Gard, Chief of Talent

Meeting Date June 12, 2024

Subject Services Agreement - Brazen Technologies - Talent / Human Resources Department

Ask of the Board

- Approve Service Agreement
- Ratify Service Agreement

Background Professional Services Agreement between the District and Brazen Technologies, McLean, VA, for the latter to provide a platform to host OUSD registration fairs and other recruitment events virtually for the period of April 1, 2024 through March 31, 2026.

Discussion Brazen Technologies will provide its browser-based chat software, offering a subscription to the Software as a Service (SaaS) platform that powers online recruiting events, registration fairs and chats for employers and prospective employees.

Fiscal Impact This service agreement will cost \$39,752.00, and will be valid from April 1, 2024 to March 31, 2026. Title 2 Funding - Resource 4035 - Site 944.

Attachment(s)

- Service Agreement with Brazen Technologies



SERVICES AGREEMENT

This Services Agreement (“AGREEMENT”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD” or “Customer”) and the entity or individual (“VENDOR” or “Brazen”, together with OUSD, “PARTIES”) named in **Exhibit A**, attached hereto and incorporated herein by reference. Unless otherwise stated herein, “VENDER INDIVIDUAL” includes (to the extent they exist): VENDOR Board members, officers, trustees, and directors; VENDOR employees, agents, consultants, contractors and subcontractors, representatives, and other similar individuals; and volunteers and others unpaid persons under VENDOR’s direction, invitation, or control.

The PARTIES hereby agree as follows:

1. **Services.** VENDOR shall provide the services (“SERVICES”) as described in **Exhibit A**.
2. **Term.** The term (“TERM”) of this AGREEMENT is established in **Exhibit A**.
3. **Compensation.**
 - a. Over the TERM, OUSD agrees to pay VENDOR the amount of money stated in **Exhibit A** for performing the SERVICES in accordance with the terms of this AGREEMENT. OUSD shall not pay and shall not be liable to VENDOR for any costs or expenses paid or incurred by VENDOR not described in **Exhibit A**.
 - b. Compensation for SERVICES performed outside of the TERM (e.g., prior to execution of this AGREEMENT or after its termination) shall be at OUSD’s sole discretion and in an amount solely determined by OUSD. VENDOR agrees that it shall not expect or demand compensation for the performance of such SERVICES.
 - c. VENDOR acknowledges and agrees not to expect or demand compensation for any SERVICES performed prior to the PARTIES, particularly OUSD, validly and properly executing this AGREEMENT and VENDOR shall not rely on verbal or written communication from any individual, other than the OUSD Superintendent or the OUSD Legal Counsel, stating that OUSD has validly and properly executed this AGREEMENT.
 - d. Payment for SERVICES shall be made for all undisputed amounts no more frequently than in monthly installment payments within thirty (30) days after VENDOR submits an invoice to OUSD, in accordance with Paragraph 4 (Invoicing), for the SERVICES actually performed and after OUSD’s written approval that the SERVICES were actually performed. Notwithstanding the foregoing, OUSD shall notify VENDOR in writing of any dispute with an invoice (along with all relevant details regarding the dispute) within thirty (30) days from the date of the invoice. Invoices for which no such timely notification is received shall be deemed accepted by OUSD as true and correct. The granting of any payment by OUSD, or the receipt thereof by VENDOR, shall in no way lessen the liability of VENDOR to correct unsatisfactory performance of SERVICES, even if the unsatisfactory character of the performance was not apparent or detected at the time a payment was made. If OUSD determines that VENDOR’s performance does not conform to the requirements of this AGREEMENT, VENDOR agrees to correct its performance without delay.
4. **Invoicing.** Invoices furnished by VENDOR under this AGREEMENT must be in a form acceptable to OUSD.

- a. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, without limitation: VENDOR name, VENDOR address, invoice date, invoice number, purchase order number, name of school or department to which the SERVICES were provided, name(s) of the person(s) performing the SERVICES, date(s) the SERVICES were performed, brief description of the SERVICES provided on each date, total invoice amount, and the basis for the total invoice amount (e.g., if hourly rate, the number of hours on each date and the rate for those hours).
 - b. If OUSD, at its sole discretion, determines an invoice fails to include the required elements, OUSD will not pay the invoice and will inform VENDOR of the missing items; VENDOR shall resubmit an invoice that includes the required elements before OUSD will pay the invoice.
 - c. Invoices must be submitted no more frequently than monthly, and within 30 days of the conclusion of the applicable billing period. OUSD reserves the right to refuse to pay untimely invoices.
 - d. OUSD reserves the right to add or change invoicing requirements. If OUSD does add or change invoicing requirements, it shall notify VENDOR in writing and the new or modified requirements shall be mandatory upon receipt by VENDOR of such notice.
 - e. To the extent that VENDOR has described how the SERVICES may be provided both in-person and not in-person, VENDOR's invoices shall—in addition to any invoice requirement added or changed under subparagraph (d)—indicate whether the SERVICES were provided in-person or not.
 - f. All invoices furnished by VENDOR under this AGREEMENT shall be delivered to OUSD via email unless OUSD requests, in writing, a different method of delivery.
5. **Suspension.** RESERVED.
6. **Termination.** Upon termination consistent with this Paragraph (Termination), VENDOR shall provide OUSD with all materials produced, maintained, or collected by VENDOR pursuant to this AGREEMENT, whether or not such materials are complete or incomplete or are in final or draft form.
- a. For Cause. Either PARTY may terminate this AGREEMENT by giving written notice of its intention to terminate for cause to the other PARTY. Written notice shall contain the reasons for such intention to terminate, which shall include (i) material violation of this AGREEMENT and such breach (a) is incapable of cure, or (b) being capable of cure, remains uncured for 30 days after the non-breaching PARTY provides the breaching PARTY with written notice of such breach; or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief may issue the termination notice without prior approval by the OUSD Governing Board, in which case this AGREEMENT would terminate upon ratification of the termination by the OUSD Governing Board or three (3) days after the notice was provided, whichever is later, unless the condition or violation ceases or satisfactory arrangements for its correction are made. VENDOR shall immediately stop providing SERVICES upon receipt of the termination notice from the OUSD Superintendent or OUSD Chief.
 - b. Due to Unforeseen Emergency or Acts of God. Notwithstanding any other language of this AGREEMENT, if VENDOR is unable to perform the SERVICES due to an unforeseen

emergency or an Act of God during the TERM, and such non-performance lasts for a period of at least sixty (60) days, OUSD may terminate this AGREEMENT upon seven (7) days prior written notice to VENDOR. The OUSD Governing Board may issue this type of termination notice or the OUSD Superintendent, upon approval by OUSD legal counsel, may issue this type of the termination notice without the need for approval or ratification by the OUSD Governing Board. VENDOR shall immediately stop providing SERVICES upon receipt of the termination notice from the OUSD Superintendent.

- c. Due to Failure to Ratify by OUSD Board. If, consistent with Paragraph 41 (Signature Authority), this AGREEMENT is executed on behalf of OUSD by the signature of the Superintendent, a Chief, a Deputy Chief, or an Executive Director, and the Board thereafter declines to ratify this AGREEMENT, this AGREEMENT shall automatically terminate on the date that the Board declines to ratify it. OUSD shall compensate VENDOR for the SERVICES satisfactorily provided through the date of termination.

7. **Data and Information Requests.**

- a. VENDOR shall timely provide OUSD with any data and information OUSD reasonably requests related to the provision of the SERVICES.
- b. VENDOR shall register with and maintain current information within OUSD's Community Partner database unless OUSD communicates to VENDOR in writing otherwise, based on OUSD's determination that the SERVICES are not related to community school outcomes. If and when VENDOR's programs and school site(s) change (either midyear or in subsequent years), VENDOR shall promptly update the information in the database.

8. **Confidentiality and Data Privacy.**

- a. OUSD may share information with VENDOR pursuant to this AGREEMENT in order to further the purposes thereof. VENDOR and VENDOR INDIVIDUALS shall maintain the confidentiality of all information received in the course of performing the SERVICES, provided such information is (i) marked or identified as "confidential" or "privileged," or (ii) reasonably understood to be confidential or privileged.
- b. VENDOR understands that student data is confidential. VENDOR or VENDOR INDIVIDUALS may only access or receive identifiable student data, other than directory information, in connection with this AGREEMENT only after VENDOR and OUSD execute (i) a California Student Data Privacy Agreement ("CSDPA") or CSDPA Exhibit E, if VENDOR is a software vendor, or (ii) the OUSD Data Sharing Agreement, if VENDOR is not a software vendor. Notwithstanding Paragraph 24 (Indemnification), should VENDOR or VENDOR INDIVIDUALS access or receive identifiable student data, other than directory information, without first executing such an agreement, VENDOR shall be solely liable for any and all claims or losses resulting from its access or receipt of such data.
- c. All confidentiality requirements, including those set forth in the separate data sharing agreement, extend beyond the termination of this AGREEMENT.

9. **Copyright/Trademark/Patent/Ownership.** As between VENDOR and OUSD, (a) VENDOR owns all right, title, interest, including all intellectual property rights, in and to the VENDOR's SaaS platform and (b) OUSD owns all right, title, and interest, including all intellectual property rights, in and to OUSD Data, as defined below.

10. **Alignment and Evaluation.** RESERVED.
11. **Inspection and Approval.** VENDOR agrees that OUSD has the right and agrees to provide OUSD with the opportunity to inspect all aspects of the SERVICES through any materials (physical or electronic) produced, created, edited, modified, or reviewed and readily available through OUSD's access to the VENDOR platform.
12. **Legal Notices.** Based on contact information set forth in **Exhibit A**, all legal notices provided for under this AGREEMENT shall be sent: (i) via email, (ii) personally delivered during normal business hours, or (iii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY. Notice shall be effective when received if personally served or emailed or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.
13. **Status.**
 - a. This is not an employment contract. VENDOR, in the performance of this AGREEMENT, shall be and act as an independent contractor.
 - b. If VENDOR is a natural person, VENDOR verifies all of the following:
 - (i) VENDOR is free from the control and direction of OUSD in connection with VENDOR's work;
 - (ii) VENDOR's work is outside the usual course of OUSD's business; and
 - (iii) VENDOR is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for OUSD.
 - c. If VENDOR is a business entity, VENDOR understands and agrees that it and any and all VENDOR INDIVIDUALS shall not be considered employees of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. VENDOR shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to VENDOR INDIVIDUALS. VENDOR verifies all of the following:
 - (i) VENDOR is free from the control and direction of OUSD in connection with the performance of the work;
 - (ii) VENDOR is providing the SERVICES directly to OUSD rather than to customers of OUSD;
 - (iii) the contract between OUSD and VENDOR is in writing;
 - (iv) VENDOR has the required business license or business tax registration, if the work is performed in a jurisdiction that requires VENDOR to have a business license or business tax registration;
 - (v) VENDOR maintains a business location that is separate from the business or work location of OUSD;
 - (vi) VENDOR is customarily engaged in an independently established business of the same nature as that involved in the work performed;

- (vii) VENDOR actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;
- (viii) VENDOR advertises and holds itself out to the public as available to provide the same or similar services;
- (ix) VENDOR provides its own tools, vehicles, and equipment to perform the SERVICES;
- (x) VENDOR can negotiate its own rates;
- (xi) VENDOR can set its own hours and location of work; and
- (xii) VENDOR is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code.

14. Qualifications, Training, and Removal.

- a. VENDOR represents and warrants that VENDOR and all VENDOR INDIVIDUALS have the necessary and sufficient experience, qualifications, and ability to perform the SERVICES in a professional manner, without the advice, control or supervision of OUSD. VENDOR will perform the SERVICES in accordance with generally and currently accepted principles and practices of its profession for services to California school districts and in accordance with applicable laws, codes, rules, regulations, and/or ordinances.
- b. VENDOR represents and warrants that all VENDOR INDIVIDUALS are specially trained, experienced, competent and fully licensed to provide the SERVICES identified in this AGREEMENT in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply.

15. Certificates/Permits/Licenses/Registration. VENDOR shall ensure that all VENDOR INDIVIDUALS secure and maintain in force such certificates, permits, licenses, and registration as are required by law in connection with the furnishing of the SERVICES pursuant to this AGREEMENT.

16. Insurance.

- a. **Commercial General Liability Insurance.** VENDOR shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, sexual misconduct, harassment, bodily injury and property damage. Coverage for corporal punishment, sexual misconduct, and harassment may either be provided through General Liability Insurance or Professional Liability Insurance. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured with the additional insured endorsement provided to OUSD within 15 days of effective date of this AGREEMENT (and within 15 days of each new policy year thereafter during the TERM). Evidence of insurance shall be attached to this AGREEMENT or otherwise provided to OUSD upon request. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against VENDOR. The policy shall protect VENDOR and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the

Insurer would have been liable if only one interest were named as an insured. The requirements of this subparagraph may be specifically waived as noted in **Exhibit A**.

- b. **Workers' Compensation Insurance.** VENDOR shall procure and maintain, at all times during the TERM of this AGREEMENT, Workers' Compensation Insurance in conformance with the laws of the State of California (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers' Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident or disease. The requirements of this subparagraph may be specifically waived as noted in **Exhibit A**.

17. Testing and Screening.

- a. **Tuberculosis Screening.** VENDOR shall ensure that all VENDOR INDIVIDUALS who will be working at OUSD sites for more than six hours in total during the TERM or who work with students (regardless of the length of time) have submitted to a tuberculosis risk assessment as required by Education Code section 49406 within the prior 60 days. If tuberculosis risk factors were identified for a VENDOR INDIVIDUAL, that VENDOR INDIVIDUAL must submit to an intradermal or other approved tuberculosis examination to determine if that VENDOR INDIVIDUAL is free of infectious tuberculosis. If the results of the examination are positive, VENDOR shall obtain an x-ray of the lungs. VENDOR, at its discretion, may choose to submit a VENDOR INDIVIDUAL to the examination instead of the risk assessment. The requirements of this subparagraph may be specifically waived as noted in **Exhibit A**.
- b. **Fingerprinting/Criminal Background Investigation.** For all VENDOR INDIVIDUALS providing the SERVICES, VENDOR shall ensure completion of fingerprinting and criminal background investigation and shall request and regularly review subsequent arrest records. VENDOR confirms that no VENDOR INDIVIDUAL providing the SERVICES has been convicted of a felony, as that term is defined in Education Code section 45122.1. VENDOR shall provide the results of the investigations and subsequent arrest notifications to OUSD. For purposes of this subparagraph, VENDOR shall use either California Department of Justice or Be A Mentor, Inc. (<http://beamentor.org/OUSDPartner>) finger-printing and subsequent arrest notification services. The requirements of this subparagraph may be specifically waived as noted in **Exhibit A**.

18. Incident/Accident/Mandated Reporting.

- a. VENDOR shall notify OUSD, via email pursuant to Paragraph 13 (Legal Notices), within twelve (12) hours of learning of any significant accident or incident in connection with the provision of the SERVICES. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, or possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. VENDOR shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. VENDOR shall bear all costs of compliance with this Paragraph.
- b. To the extent that a VENDOR INDIVIDUAL is included on the list of mandated reporters found in Penal Code section 11165.7, VENDOR agrees to inform that VENDOR INDIVIDUAL, in writing, that they are a mandated reporter, and describing the associated obligations to report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.

19. **Intentionally omitted.**
20. **Conflict of Interest.**
- a. VENDOR and all VENDOR INDIVIDUALS shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. VENDOR shall not hire, contract with, or employ any officer or employee of OUSD during the TERM without the prior approval of OUSD Legal Counsel.
 - b. VENDOR affirms, to the best of his/her/its knowledge, that there exists no actual or potential conflict of interest between VENDOR's family, business, or financial interest and the SERVICES provided under this AGREEMENT, and in the event of any change in either private interest or the SERVICES under this AGREEMENT, any question regarding a possible conflict of interest which may arise as a result of such change will be immediately brought to OUSD's attention in writing.
 - c. Through its execution of this AGREEMENT, VENDOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event VENDOR receives any information subsequent to execution of this AGREEMENT which might constitute a violation of said provisions, VENDOR agrees it shall immediately notify OUSD in writing.
21. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** VENDOR certifies, to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this AGREEMENT, certifies that neither it nor its principals appear on the Excluded Parties List (<https://www.sam.gov/>).
22. **Limitation of OUSD Liability.** Other than as provided in this AGREEMENT, OUSD's financial obligations under this AGREEMENT shall be limited to the compensation described in Paragraph 3 (Compensation). Notwithstanding any other provision of this AGREEMENT, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this AGREEMENT for the SERVICES performed in connection with this AGREEMENT.
23. **Limitation of Vendor Liability.** IN NO EVENT WILL VENDOR BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER VENDOR WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH

LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. EXCEPT FOR BREACH OF CONTRACT, IN NO EVENT WILL VENDOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO VENDOR UNDER THIS AGREEMENT. FOR BREACH OF CONTRACT CLAIMS, IN NO EVENT WILL VENDOR'S AGGREGATE LIABILITY EXCEED FIVE HUNDRED THOUSAND (\$500,000).

24. **Indemnification.**

- a. To the furthest extent permitted by California law, VENDOR shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("OUSD Indemnified Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of VENDOR's performance of this AGREEMENT. VENDOR also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier or subcontractor furnishing work, services, or materials to VENDOR arising out of the performance of this AGREEMENT. VENDOR shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at VENDOR's own expense, including attorneys' fees and costs, and OUSD shall have the right to accept or reject any legal representation that VENDOR proposes to defend OUSD Indemnified Parties.
- b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless VENDOR and VENDOR INDIVIDUALS from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD's performance of this AGREEMENT. OUSD shall, to the fullest extent permitted by California law, defend VENDOR and VENDOR INDIVIDUALS at OUSD's own expense, including attorneys' fees and costs.

25. **Audit.** VENDOR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of VENDOR transacted under this AGREEMENT. VENDOR shall retain these books, records, and systems of account during the TERM and for three (3) years after the earlier of (i) the TERM or (ii) the date of termination. VENDOR shall permit OUSD, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the SERVICES covered by this AGREEMENT. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to VENDOR and shall conduct audit(s) during VENDOR'S normal business hours, unless VENDOR otherwise consents.

26. **Non-Discrimination.** It is the policy of OUSD that, in connection with all work performed under legally binding agreements, there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, VENDOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code section 12900 and Labor Code section 1735 and OUSD policy. In addition, VENDOR agrees to require like compliance by all its subcontractor (s). VENDOR shall not engage in unlawful discrimination in employment on the basis of actual or perceived: race, color, national

origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.

27. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, VENDORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
28. **Waiver.** No delay or omission by either PARTY in exercising any right under this AGREEMENT shall operate as a waiver of that or any other right or prevent a subsequent act from constituting a violation of this AGREEMENT.
29. **Assignment.** The obligations of VENDOR under this AGREEMENT shall not be assigned by VENDOR without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void. Notwithstanding the foregoing, any assignment as the result of a merger, acquisition or other reorganization shall require notice to OUSD.
30. **No Rights in Third Parties.** This AGREEMENT does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
31. **Litigation.** This AGREEMENT shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this AGREEMENT.
32. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this AGREEMENT are incorporated herein by reference. VENDOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this AGREEMENT, the terms and provisions of this AGREEMENT shall govern.
33. **Integration/Entire Agreement of Parties.** This AGREEMENT constitutes the entire agreement between the PARTIES and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This AGREEMENT may be amended or modified only by a written instrument executed by both PARTIES.
34. **Severability.** If any term, condition, or provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
35. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law 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 therein.
36. **Captions and Interpretations.** Paragraph headings in this AGREEMENT are used solely for convenience, and shall be wholly disregarded in the construction of this AGREEMENT. No provision of this AGREEMENT shall be interpreted for or against a PARTY because that PARTY or

its legal representative drafted such provision, and this AGREEMENT shall be construed as if jointly prepared by the PARTIES.

37. **Calculation of Time.** For the purposes of this AGREEMENT, "days" refers to calendar days unless otherwise specified and "hours" refers to hours regardless of whether it is a work day, weekend, or holiday.
38. **Counterparts and Electronic Signature.** This AGREEMENT, and all amendments, addenda, and supplements to this AGREEMENT, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this AGREEMENT, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.
39. **W-9 Form.** If VENDOR is doing business with OUSD for the first time, VENDOR acknowledges that it must complete and return a signed W-9 form to OUSD.
40. **Agreement Publicly Posted.** This AGREEMENT, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
41. **Signature Authority.**
 - a. Each PARTY has the full power and authority to enter into and perform this AGREEMENT, and the person(s) signing this AGREEMENT on behalf of each PARTY has been given the proper authority and empowered to enter into this AGREEMENT.
 - b. Notwithstanding subparagraph (a), VENDOR acknowledges, agrees, and understands (i) that only the Superintendent, and the Chiefs, Deputy Chiefs, and Executive Directors who have been delegated such authority, may validly sign contracts for OUSD and only under limited circumstances, and (ii) that all such contract still require ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other individual as having the proper authority to enter into this AGREEMENT on behalf of OUSD.
42. **Contract Contingent on Governing Board Approval.** The PARTIES acknowledge, agree, and understand that OUSD shall not be bound by the terms of this AGREEMENT unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, a Chief, or a Deputy Chief authorized by the Education Code or Board Policy, and no compensation shall be owed or made to VENDOR absent such formal approval or valid and proper execution.
43. **Additional Vendor Terms.**
 - a. Definitions.
 - i. "Authorized User" means OUSD and OUSD's employees, consultants, contractors,

users, and agents

(i) who are authorized by OUSD to access and use the Services under the rights granted to OUSD pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.

ii. "Services" means the services provided by VENDOR as described in Exhibit A, specifically browser-based chat software that powers virtual career fairs, recruiting chatbots, text and video.

iii. "OUSD Data" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of OUSD or any other Authorized User through the Services.

iv. "Documentation" means VENDOR's user manuals, handbooks, and guides relating to the Services provided by VENDOR to OUSD either electronically or in hard copy form.

v. "VENDOR IP" means the Services, the Documentation, and all intellectual property provided to OUSD or any other Authorized User in connection with the foregoing. For the avoidance of doubt, VENDOR IP includes Aggregated Statistics and any information, data, or other content derived from VENDOR's monitoring of OUSD's access to or use of the Services, but does not include OUSD Data.

vi. "Order Form" means each VENDOR ordering document signed by duly authorized representatives of both Parties which references this Agreement, identifies the Services ordered by OUSD from VENDOR, sets forth the prices for the Services. This Agreement shall govern the terms of any Order Form.

b. Access and Use.

i. Provision of Access. Subject to and conditioned on OUSD's payment of Fees, the services listed on the applicable Order Form as priced according to Exhibit A, and compliance with all terms and conditions of this Agreement, VENDOR hereby grants OUSD a revocable, non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Services during the Term solely for OUSD's internal business operations by Authorized Users in accordance with the terms and conditions herein. VENDOR shall provide OUSD the necessary passwords and access credentials to allow OUSD to access the Services. OUSD acknowledges that services do not require VENDOR to ship any physical software to perform Services in Exhibit A.

ii. VENDOR will be entitled, at any time and for whatever reason, to modify the Services and/or some or all of the functionality or content of the Services with prior notice so long as such modification does not materially and adversely reduce the functionality of the Services. VENDOR may elect in its sole discretion to condition the continuation of the rights granted hereunder on OUSD's accepting service improvements, corrections, adaptations, and conversions to more recent versions or any other changes to the Services so long as those do not materially or adversely reduce the functionality of the Services.

iii. Documentation License. Subject to the terms and conditions contained in this Agreement, VENDOR hereby grants OUSD a non-exclusive, non-sublicensable, non-transferable license for Authorized Users to use the Documentation during the Term solely for OUSD's internal business purposes in connection with use of the Services.

c. Use Restrictions. OUSD shall not, and shall not permit any Authorized Users to, use the Services,

any software component of the Services, or Documentation for any purposes beyond the scope of the access granted in this Agreement. OUSD shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services, any software component of the Services, or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation except as expressly permitted under this Agreement; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law, regulation, or rule.

d. Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, VENDOR may monitor OUSD's use of the Services and collect and compile data and information related to OUSD's use of the Services to be used by VENDOR only in an aggregated and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services ("Aggregated Statistics"). As between VENDOR and OUSD, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by VENDOR. OUSD acknowledges that VENDOR may compile anonymized Aggregated Statistics based on OUSD Data input into the Services. OUSD agrees that VENDOR may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify OUSD or OUSD's Confidential Information.

e. Reservation of Rights. VENDOR reserves all rights not expressly granted to OUSD in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to OUSD or any third Party any intellectual property rights or other right, title, or interest in or to the VENDOR IP.

f. Suspension. Notwithstanding anything to the contrary in this Agreement, VENDOR may temporarily suspend OUSD's and any other Authorized User's access to any portion or all of the Services if: (i) VENDOR reasonably determines that (A) there is a threat or attack on any of the VENDOR IP; (B) OUSD's or any other Authorized User's use of the VENDOR IP disrupts or poses a security risk to the VENDOR IP or to any other customer or vendor of VENDOR; (C) OUSD or any other Authorized User is using the VENDOR IP for fraudulent or illegal activities; (D) subject to applicable law, OUSD has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) VENDOR's provision of the Services to OUSD or any other Authorized User is prohibited by applicable law; (ii) any vendor of VENDOR has suspended or terminated VENDOR's access to or use of any third-Party services or products required to enable OUSD to access the Services; or (iii) in accordance with Section 5 (any such suspension described in subclause (i), (ii), or (iii), a "Service Suspension"). VENDOR shall use commercially reasonable efforts to provide written notice of any Service Suspension to OUSD and to provide updates regarding resumption of access to the Services following any Service Suspension. VENDOR shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Services Suspension is cured. VENDOR will have no liability for any damage, liabilities, losses (including any loss of or profits), or any other consequences that OUSD or

any other Authorized User may incur as a result of a Service Suspension.

g. OUSD Responsibilities.

i. Acceptable Use Policy. The Services may not be used for unlawful, fraudulent, offensive, or obscene activity, as further described and set forth in VENDOR's Terms of Use ("Terms of Use") located at <http://www.Brazen.com/terms>, as may be amended from time to time, which is incorporated herein by reference. Notwithstanding the foregoing, Brazen agrees to provide OUSD with prior notice of any material changes to the Terms of Use. OUSD will comply with all terms and conditions of this Agreement, all applicable laws, rules, and regulations, and all guidelines, standards, and requirements that may be posted on <http://www.Brazen.com/terms> from time to time. In the event of conflict between the terms of this Agreement and the Vendor's Terms of Use, this Agreement shall control.

ii. Account Use. OUSD is responsible and liable for all uses of the Services and Documentation resulting from the access provided by OUSD, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing OUSD is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement is taken by OUSD will be deemed a breach of this Agreement by OUSD. OUSD shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services and shall cause Authorized Users to comply with such provisions.

iii. OUSD Data. OUSD hereby grants to VENDOR a non- exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the OUSD Data and perform all acts with respect to the OUSD Data subject to the terms of this Agreement, and a non- exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display anonymized OUSD Data incorporated within the Aggregated Statistics. In no event will VENDOR, directly, or indirectly share or disclose any personally identifiable information to or with any third party, or authorize any other person or entity to do the same. OUSD will ensure that OUSD Data and any Authorized User's use of OUSD Data will not violate any policy or terms referenced in or incorporated into this Agreement or any applicable law. OUSD will retain all ownership and intellectual property rights in and to the OUSD Data, and are solely responsible for the development, content, operation, and use of OUSD Data.

iv. Passwords and Access Credentials. OUSD is responsible for keeping its passwords and access credentials associated with the Services confidential. OUSD will not sell or transfer them to any other person or entity. OUSD will promptly notify VENDOR about any unauthorized access to your passwords or access credentials.

h. Service Levels and Support.

i. Service Levels. Subject to the terms and conditions of this Agreement, VENDOR shall use commercially reasonable efforts to make the Services available in accordance with the service levels described in Exhibit B ("Service Levels").

ii. Support. The access rights granted hereunder entitle OUSD to the support services described in Exhibit B.

i. Privacy Policy. VENDOR complies with its privacy policy available at <https://www.Brazen.com/privacy> ("Privacy Policy"), in providing the Services. The Privacy Policy is subject to change as described therein. By accessing, using, and providing information to or through the Services, OUSD acknowledges that OUSD has reviewed and accepted VENDOR'S Privacy Policy, and OUSD consents to all actions taken by VENDOR with respect to OUSD's information in compliance with the then-current version of VENDOR's Privacy Policy.

j. Intellectual Property Ownership; Feedback. As between OUSD and VENDOR, (a) VENDOR owns all right, title, and interest, including all intellectual property rights, in and to the Services and (b) OUSD owns all right, title, and interest, including all intellectual property rights, in and to OUSD Data. If OUSD or any of OUSD's employees, contractors, or agents sends or transmits any communications or materials to VENDOR by mail, email, telephone, or otherwise, suggesting or recommending changes to the Services, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), VENDOR is free to use such Feedback. All Feedback is and will be treated as non-confidential. OUSD hereby assigns to VENDOR on OUSD's behalf, and shall cause OUSD employees, contractors, and agents, as permissible by law, to assign, all right, title, and interest in, and VENDOR is free to use, without any attribution or compensation to OUSD or any third Party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although VENDOR is not required to use any Feedback.

k. Personal Data.

i. Definitions. As used in this Section 13, the terms "Controller", "Data Subject", "Personal Data", "Personal Data Breach" "Process" "Processor" and "Subcontractor" shall have the same meanings as in the EU General Data Protection Regulation 2016/679 ("GDPR"), and their cognate terms shall be construed accordingly.

ii. VENDOR shall process Personal Data of Users solely on behalf of OUSD for the purpose of providing the Services and as expressly authorized under this Agreement and not for any other purpose or in any other manner, unless specifically instructed by OUSD in writing to do so, or as required by applicable law. When VENDOR Processes Personal Data for or on behalf of OUSD, VENDOR agrees:

a. Not to disclose or transfer Personal Data to any third Party without OUSD's prior express written consent, except where such disclosure or transfer is:

1. To a subcontractor that, prior to such disclosure, has (1) agreed by written contract to be bound by obligations no less onerous than the obligations set out in these Terms and Conditions, and (2) undergone a thorough assessment for compliance with these obligations conducted by Brazen and agreed to be assessed periodically by Brazen; or
2. To an affiliate, in which case Brazen will require the affiliate to provide at least the same level of protection for the Personal Data as is required by Brazen under this Section; or
3. Required by applicable law.

b. To notify OUSD without undue delay following VENDOR's receipt of requests from individuals exercising rights under the GDPR or other data protection laws applicable to OUSD (such as rights to rectify, erase or block Personal Data) relating to Personal Data

that VENDOR Processes for or on behalf of OUSD. By appropriate technical and organizational measures, insofar as this is possible, taking into account the nature of the Processing, VENDOR agrees to assist OUSD in fulfilling its obligations to respond to such communications and comply with applicable law.

c. To take appropriate technical and organizational security measures to adequately protect OUSD and its Personal Data of Users against misuse and loss in accordance with the Agreement and applicable law.

d. To regularly train personnel responsible for processing Personal Data of Users about the obligations set forth in this Agreement, to provide an appropriate level of supervision and guidance to such personnel (including background checks where permitted by law), and to enforce disciplinary policies for personnel who fail to comply with those obligations;

iii. OUSD represents and warrants to VENDOR that it has obtained or established, or shall have obtained or established prior to any Processing of Personal Data under this Agreement, all rights or lawful basis reasonably required to Process, and to authorize VENDOR to Process on OUSD's behalf, Personal Data of Users as contemplated by this Agreement.

iv. VENDOR shall, without undue delay, inform OUSD in the event of any actual or reasonably suspected Personal Data Breach that may involve Personal Data of Users.

v. VENDOR shall maintain and update at least annually a Personal Data Breach incident response plan that complies in all respects with applicable laws and industry best practices for companies Processing the types of Personal Data that VENDOR will Process in connection with the applicable Order.

vi. Retention and Return of Personal Data. Upon termination or expiration of the applicable Order, VENDOR shall, consistent with OUSD's directions, return, delete or destroy all Personal Data that VENDOR obtains in connection with the applicable Order, including all originals and copies of such Personal Data in any medium, and any materials derived from or incorporating such Personal Data, except that this requirement shall not apply to the extent VENDOR is required by applicable law to retain some or all of the Personal Data, or to Personal Data it has archived on back-up systems, which Personal Data VENDOR shall securely protect from any further processing and eventually delete in accordance with VENDOR's deletion policies, except to the extent required by applicable law.

I. Confidential Information.

i. From time to time during the Term, VENDOR and OUSD (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party") information about its business affairs, products, confidential intellectual property, trade secrets, third- Party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, whether or not marked, designated, or otherwise identified as "confidential" at the time of disclosure (collectively, "Confidential Information"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the Receiving

Party; (c) rightfully obtained by the Receiving Party on a non-confidential basis from a third Party; or (d) independently developed by the Receiving Party.

ii. The Receiving Party shall not disclose the Disclosing Party's Confidential Information to any person or entity, except to the Receiving Party's employees, agents, or subcontractors who have a need to know the Confidential Information for the Receiving Party to exercise its rights or perform its obligations hereunder and who are required to protect the Confidential Information in a manner no less stringent than required under this Agreement.

iii. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that if permitted by law, the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to assist Disclosing Party in obtaining a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the date such Confidential Information is first disclosed to the Receiving Party.

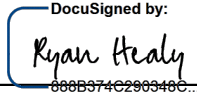
iv. Each Party acknowledges and agrees that money damages may not be a sufficient remedy for any breach or threatened breach of this Section L by a Receiving Party. Therefore, in addition to all other remedies available at law (which neither Party waives by the exercise of any rights hereunder), the Disclosing Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

REST OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this AGREEMENT and to be bound by its terms and conditions:

VENDOR

Name: Ryan Healy

Signature:  _____
888B374C290348C...

Position: EVP

Date: 5/14/2024

One of the terms and conditions to which VENDOR specifically agrees by its signature is subparagraph (c) of Paragraph 3 (Compensation), which states that VENDOR acknowledges and agrees not to expect or demand compensation for any SERVICES performed prior to the PARTIES, particularly OUSD, validly and properly executing this AGREEMENT and shall not rely on verbal or written communication from any individual, other than the OUSD Superintendent or OUSD Legal Counsel, stating that OUSD has validly and properly executed this AGREEMENT.

OUSD

Name: Tara Gard


Signature:  _____

Position: Chief of Talent Officer

Date: 5/17/2024

- Board President (for approvals)
- Chief/Deputy Chief/Executive Director (for ratifications)


Name: Kyla Johnson-Trammell

Signature:  _____

Position: Superintendent

Date: 6/13/2024

Approved as to form by OUSD Legal Department

Name: Roxanne De La Rocha Signature:  _____

Date: 5/13/24

SERVICES AGREEMENT

EXHIBIT A

(Paragraph numbers in Exhibit A corresponds to the applicable Paragraph number in this Agreement.)

VENDOR: Brazen Technologies

1. **Services.** Describe the SERVICES VENDOR will provide: Brazen Technologies is a browser-based chat software offering a subscription to the SaaS platform that powers online recruiting events and chats for employers and prospective employees.

2. **Term.**

a. This AGREEMENT shall start on the below Start Date. If no date is entered, then this AGREEMENT shall start on the latest of the dates on which each of the PARTIES signed this AGREEMENT.

Start Date: April 1, 2024

b. Unless terminated earlier, this AGREEMENT shall end on the below End Date. If no date is entered, then this AGREEMENT shall end on the first June 30 after start date listed in subparagraph (a). If the dates set forth in this subparagraph and subparagraph (a) would cause this AGREEMENT to exceed the limits set forth in state law (e.g., Education Code section 17596), this AGREEMENT shall instead automatically end upon reaching said limit.

End date: March 31, 2026

3. **Compensation.**

a. The basis for payment to VENDOR shall be:

Hourly Rate: _____ per hour

Daily Rate: _____ per day

Weekly Rate: _____ per week

Annual Rate: \$19,876.00 per year

Per Student Served Rate: _____ per student served

Performance/Deliverable Payments: Describe below the performance and/or deliverable(s) as well as the associated rate(s): _____

b. Over the TERM, the total compensation under this AGREEMENT shall not exceed the below amount. This sum includes (but is not limited to) compensation for the full performance of this AGREEMENT and all fees, costs, and expenses incurred by VENDOR including (but not limited to) labor, materials, taxes, profit, overhead, travel, insurance, permitted subcontractor costs, and other costs.

Not-To-Exceed Amount: \$39,752

13. **Legal Notices.**

OUSD

Site/Dept: Legal Department

Address: 1011 Union Street, Site 946

City, ST Zip: Oakland, CA 94607

Phone: 510-879-5060

Email: ousdlegal@ousd.org

VENDOR

Name/Dept: Ryan Healy

Address: 7900 Westpark Drive, Suite T700 _____

City, ST Zip: McLean, VA 22102

Phone: (203) 314-6138 _____

Email: ryan@radancy.com

17. **Insurance.** OUSD has waived the following insurance requirements. Written confirmation of a waiver (e.g., email from OUSD Risk Management Officer) is attached hereto. Failure to attach such written confirmation voids any such waiver even if otherwise properly given.

Commercial General Liability Insurance. Waiver typically available by OUSD if no VENDOR INDIVIDUAL interacts or has contact with OUSD students (in-person or virtual) and the not-to-exceed amount is \$25,000 or less.

Workers' Compensation Insurance. Waiver typically available by OUSD if VENDOR has no employees.

18. **Testing and Screening.** OUSD has waived the following testing and screening requirements. Written confirmation of a waiver (e.g., email from OUSD Risk Management Officer) is attached hereto. Failure to include such written confirmation voids any such waiver even if otherwise properly given.

X *Tuberculosis Screening.* Waiver typically available by OUSD if VENDOR INDIVIDUALS will have no in-person contact with OUSD students.

X *Fingerprinting/Criminal Background Investigation.* Waiver typically available by OUSD if no VENDOR INDIVIDUAL interacts or has contact with OUSD students (in-person or virtual).

20. **Health and Safety Orders and Requirements; Site Closures.** If there is an Order or event in which school sites and/or District offices may be closed or otherwise inaccessible, would the SERVICES be able to continue?

X Yes, the SERVICES would be able to continue as described herein.

No, the SERVICES would not be able to continue.

Exhibit B – Service Level Agreement**1. Definitions**

The following terms shall have the following respective meanings:

- 1.1 "Event" is an online gathering that includes registration before the event begins and activities between the event's start and end time.
- 1.2 "Live Event" is the duration of time between the event's scheduled start time and its end time.
- 1.3 "Application" is the application suite provided by Brazen to Customers to create, manage and execute Events.
- 1.4 "Critical Application Functionality" covers these Application functions: Login, Create Event Registration, Participate in Chat, Rate a Chat, View Event Lobby and View Booths.
- 1.5 "Supporting Application Functionality" covers these Application functions: View Chat History, Edit Event Registration, Edit Event Design, Edit Event Content, Edit Booth Settings, Edit Booth Content, Edit Booth Representatives, Edit Opportunities, Preview Event Landing Screen, Preview Booth Screen, Download Event Registration CSV Report, View Event Statistics Report, View Line Activity Report.
- 1.6 "Event Services" includes both "Critical Application Functionality" and "Supporting Application Functionality."
- 1.7 "Customer" means the individual or organization with whom Brazen has a signed contract to provide Event Services.
- 1.8 "Scheduled Maintenance Window" is the time during which the Event Services are not required to be available in accordance with the following schedule, which schedule Brazen may change from time to time upon reasonable notice to Customer:

Period	Duration of Scheduled Downtime	Time Period
weekly	6 hours	Saturdays 6:00PM to 11:59 PM US Eastern Time

Brazen is relieved of its duty to provide the Services only if it has elected to schedule maintenance during the Scheduled Maintenance Window.

- 1.9 "Unscheduled Maintenance" means maintenance performed (i) when, in Brazen's commercially reasonable discretion, it is necessary to avoid loss of Services, or (ii) during any downtime mutually agreed to with Customer to correct a situation that endangers Customer's ability to utilize the Services.
- 1.10 "Total Event Failure" means that greater of fifty percent (50%) of the total event attendees cannot access the Application during the Live Event, or Critical Application Functionality does not work for fifty percent (50%) of the Live Event duration.
- 1.11 "High Impact Event Failure" means that greater than twenty five percent (25%) of the total event attendees cannot access the Application during the Live Event, or Critical Application Functionality does not work for twenty five percent (25%) of the Live Event Duration.
- 1.12 "Partial Event Failure" means that greater than fifteen percent (15%) of the total event attendees cannot access the Application during the Live Event, or Critical Ap Application Functionality does not work for fifteen percent (15%) of the Live Event Duration.
- 1.13 "Standard Business Hours" means the time between 8 AM and 6 PM Eastern Standard Time on business days.
- 1.14 "Acknowledgment" is the act by Brazen support personnel to indicate to the Customer that Brazen has received the request. Acknowledgments are typically communicated via email or phone call.
- 1.15 "Start" is when Brazen support personnel start working a support request.
- 1.16 "Resolution" means that an issue has been conclusively settled or solved.
- 1.17 "Determination" means that a decision has been made regarding the prioritization of a feature request.
- 1.18 "Remedy Plan" means the plan produced by Brazen to remedy issues that impact "Service Availability" as defined in Brazen's service commitment.
- 1.19 "Event Value" is the pro-rated value of a single Event based on the Customer's total contract value.
- 1.20 "Contract Value" means the total value of the signed Customer contract.

2. Service Availability

- 2.1 Customer acknowledges that it will not be able to access Event Services during the Scheduled Maintenance Window on those occasions when maintenance is actually scheduled, or during Unscheduled Maintenance.
- 2.2 Brazen shall endeavor to provide advance notice to Customer of Unscheduled Maintenance that affects Customer. Brazen shall indicate to Customer the reasons for and duration of any Unscheduled Maintenance.

3. Support

- 3.1 On call support for Live Events will be available only during Standard Business Hours
- 3.2 Brazen will classify Customer service requests for all Application access issues using the following classes:

- 3.2.1 Critical
Event Services are unavailable.

Business Hours Resolution Goals	After Hours Resolution Goals
<ul style="list-style-type: none"> • 15 minute acknowledgment • 15 minute start • 1-2 day resolution 	<ul style="list-style-type: none"> • 60 minute acknowledgement • 60 minute start • 1-2 day resolution

- 3.2.2 Major
Event Services are available but are either diminished or subject to constant interruption.

Business Hours Resolution Goals	After Hours Resolution Goals
<ul style="list-style-type: none"> • 15 minute acknowledgment • 15 minute start • 1-2 day resolution 	<ul style="list-style-type: none"> • 60 minute acknowledgement • 60 minute start • 1-2 day resolution

- 3.2.3 Minor
Event Services are available but with less than perfect quality.

Business Hours Resolution Goals	After Hours Resolution Goals

<ul style="list-style-type: none"> • 15 minute acknowledgment • 30 minute start • 1-4 day resolution depending on impact 	<ul style="list-style-type: none"> • Support is not available after hours
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3.2.4 Question

A Customer inquiry about Event Services (e.g. how do I reset my password).

Business Hours Resolution Goals	After Hours Resolution Goals
<ul style="list-style-type: none"> • 1 hour acknowledgment • 1 hour start • 1 day resolution 	<ul style="list-style-type: none"> • Support is not available after hours

3.2.5 Feature

A Customer request for new or enhanced Application functionality.

Business Hours Resolution Goals	After Hours Resolution Goals
<ul style="list-style-type: none"> • 1 hour acknowledgment • 1 day start • 1 week determination 	<ul style="list-style-type: none"> • Support is not available after hours

4. Service Commitment

Brazen warrants that it will make reasonable efforts within industry standards to provide Service Availability of at least 99%. "Service Availability" is the sum of hours that the Application is available divided by total hours in the measurement period, excluding any scheduled maintenance. Service Availability is measured on a calendar year-to-date basis based on data gathered by Brazen's monitoring systems via a process by which verifiable attempts shall be made periodically to access a standard URL within the Application. If an access test succeeds, then the Service and Application shall be deemed as available.

In the event that a Customer independently determines that System Availability has been measured at less than the Service Commitment, the Customer may communicate this problem in writing to Brazen, stating in detail the exact nature of the problem. Brazen will provide to the Customer a Remedy Plan within fifteen (15) business days from its receipt of such notice. The Customer will have the right to review and discuss the Remedy Plan with Brazen for a reasonable period of time. Upon mutual agreement to the Remedy Plan, Brazen will then execute that Remedy Plan.

If Brazen should fail to provide a Remedy Plan within that time period, the Customer may provide written notice to Brazen stating that the Customer believes Brazen has materially breached (the "Breach") its Agreement with the Customer.

5. Remedies

5.1 Credits

5.1.1 If a Total Event Failure occurs, and Customer notifies Brazen within three (3) business days of the failure, the Customer will qualify for a credit equal to the Event Value.

5.1.2 If a High Impact Event Failure occurs, and Customer notifies Brazen within three (3) business days of the failure, the Customer will qualify for a credit equal to fifty percent (50%) of the Event Value.

5.1.3 If a Partial Event Failure occurs, and Customer notifies Brazen within three (3) business days of the failure, the Customer will qualify for a credit equal to fifteen percent (15%) of the Event Value.

5.2 Exceptions

5.2.1 Customer shall not earn any credit if the failure qualifying the Customer for a credit occurs

- (i) During any Scheduled Maintenance Window;
- (ii) During any Unscheduled Maintenance Window;
- (iii) Whenever Brazen has the right to suspend Customer's access to Event Services pursuant to the Agreement;
- (iv) As the result of any occurrence, cause or event outside Brazen's reasonable control, which includes but is not limited to:
 - a. Any Force Majeure event under the Agreement;
 - b. Any failure of Customer's equipment or service;
 - c. Any third party equipment or service not within the sole control of Brazen;

- d. The result of the network equipment or network conditions between Brazen and the Customer's personal computers.

5.3 Sole and Exclusive Remedy

Except as specifically expressed in the Agreement, Section 5 of this Service Level Agreement ("SLA") states Customer's sole and exclusive remedy for any failure or interruption of Services and for any failure by Brazen to meet any Service Commitment level or issue resolution goal, as well as for any breach or other violation by Brazen or any supplier of any warranty or obligation under this SLA.