

Date: 07 / 17 / 2024

Prepared By:  
Chris Sorrell  
chriss@talkingpts.org

Prepared For:  
Stacy King  
sking@kcia.us

TalkingPoints is a nonprofit organization on a mission to connect teachers and families for student success. It offers a centralized parent engagement platform with translation in 150 languages for schools and districts to build stronger communication, community, and engagement between staff, parents, and students. Kansas City International Academy is interested in utilizing TalkingPoints to engage with all parents in their home languages and involve them in their children's education.

Product Purchased: TalkingPoints for Schools & Districts

Term	Number of Students	Annual Cost
Start Date: 2024-08-01 End Date: 2025-07-31	625	\$5,500

Product	Subtotal
Document Translation	\$2,000.00
SPDP TalkingPoints Licenses	\$3,500.00

**Additional Details:**

- TalkingPoints will import data from Kansas City International Academy's Student Information System through integration.

**Payment Schedule:**

- The fees will be paid by the Kansas City International Academy within 30 days of receipt of an invoice from TalkingPoints (but no sooner than 30 days after execution of this agreement by the parties).

**Terms:**

- Subject to general terms of service as detailed at [www.talkingpts.org](http://www.talkingpts.org) under Terms of Service.

**Additional Notes:**

- Total cost is inclusive of TalkingPoints support and implementation assistance.
- This proposal is confidential between TalkingPoints and Kansas City International Academy (07 / 17 / 2024).

## TalkingPoints Order Form

### Contacts

Customer: Kansas City International Academy  
Stacy King  
414 Wallace Ave  
Kansas City, MO 64125  
sking@kcia.us

TalkingPoints  
Chris Sorrell  
Dept LA 25293  
Pasadena, CA 91185-5293  
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### TalkingPoints organization

TalkingPoints is a non-profit organization with the mission to meaningfully connect teachers, parents and students across technological and language barriers to increase parent engagement. We believe that parent engagement is critical to student success, yet is often challenging. TalkingPoints helps change this to drive parent engagement through opening up communication channels that build relationships.

### TalkingPoints product

TalkingPoints' product is a two-way, multi-lingual texting platform that allows for fast, cheap and accessible communication between districts, schools and teachers with parents and students. Schools use a web application to send text messages to parents who receive them in their own languages as well as English. Parents can reply in their own languages, and receive both the English and the original version of the messages. Since TalkingPoints works via text messages, TalkingPoints is accessible for all parents who own a simple mobile phone.

TalkingPoints allows for instant translation (machine and human-driven) both outbound and inbound, opening up communication channel for parents who do not speak English. Schools can also send interactive messages drawn from pre-written text message programs, conduct surveys (with data visualization), send multiple-choice questions, send automatic follow up messages depending on how the parent replies. Analytics dashboards are also available to track engagement statistics of parents.

Subject to the license restrictions in Section 3.3 of the Terms, TalkingPoints will license to Customer the use of its multi-lingual texting platform ("**Software**") for Customer and, if applicable, its associated schools during the Term for 625 students.

Support: This Agreement includes data import support, system maintenance, system support, and user support to Customer for the length of the Agreement. It also includes ongoing system upgrades at no additional cost to Customer (the support, together with the Software, the "**Services**").

Data Import: If Customer opts for TalkingPoints to import its data, it will take a minimum of two (2) weeks and up to a maximum of six (6) weeks to import all data, provided that TalkingPoints has access to required data.

**Fees:** Total cost at \$5,500.00 (“Annual License Fee”) for a minimum of 625 students (with additional payment for additional students if added during the Term).

**Term:** the initial term begins on 2024-08-01 and extends to 2025-07-31 unless terminated pursuant to Section 7 (the “**Term**”).

<b>Product</b>	<b>Subtotal</b>
Document Translation	\$2,000.00
SPDP TalkingPoints Licenses	\$3,500.00
<b>Total</b>	<b>\$5,500.00</b>

### Agreement

This software services and support (“Agreement”) is entered into as of 2024-08-01 (the “Effective Date”) between TalkingPoints, Inc. (“TalkingPoints”), and the customer listed above (“Customer”). This Agreement includes and incorporates (i) the above Order Form, (ii) any Order Forms previously or subsequently entered into by the parties, and (iii) TalkingPoints Customer Terms, which (1) have been previously provided and agreed to by Customer in connection with a previous order form; or (2) are attached hereto are set forth at <https://talkingpts.org/terms-of-service/> and all of which are in each case hereby incorporated by reference. This Agreement contains, among other things, warranty disclaimers, liability limitations and use limitations. There will be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

**TalkingPoints:**



Name: Chris Sorrell

Title: Account Executive

Date: 07 / 17 / 2024

**Customer:**

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## TalkingPoints Customer Terms

PLEASE READ THESE CUSTOMER TERMS (THE "TERMS") CAREFULLY BEFORE USING THE SERVICES OFFERED BY TALKINGPOINTS, INC. ("TALKINGPOINTS"). BY MUTUALLY EXECUTING ONE OR MORE ORDER FORMS WITH TALKINGPOINTS WHICH REFERENCE THESE TERMS (EACH, AN "ORDER FORM"), YOU ("CUSTOMER") AGREE TO BE BOUND BY THESE TERMS (TOGETHER WITH ALL ORDER FORMS, THE "AGREEMENT") TO THE EXCLUSION OF ALL OTHER TERMS. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS.

### 1. Order Form

1.1 Incorporation of Order Form. Upon mutual execution, each Order Form shall be incorporated into and form a part of the Agreement. Subject to Customer's compliance with the terms and conditions of this Agreement, TalkingPoints grants Customer the right to access and use the Services specified in each Order Form during the Term for the internal business purposes of Customer.

### 2. License of Software to Customer

2.1 License. Subject to the terms of this Agreement, TalkingPoints hereby grants to Customer a limited, non-exclusive, non-sublicensable and non-transferable license for Customer employees and staff, and their students or parents or guardians of students (collectively, "*End Users*") to use the Software during the Term.

2.2 Responsibility for End Users. Customer is responsible for the actions of all End Users, for ensuring that only authorized End Users are provided access to the Software, and that access of End Users authorized by Customer is limited to that portion of the Software and Customer Data (as defined below) as is reasonably necessary in order to fulfill the purposes of this Agreement.

2.3 Privacy Policy. Customer acknowledges and agrees to comply with the Privacy Policy as outlined in the TalkingPoints website ([www.talkingpts.org](http://www.talkingpts.org)).

### 3. Ownership of Software; Third Party Materials

3.1 Third Party Materials. TalkingPoints and its licensors are and will remain the exclusive owners of all right, title and interest in and to the Software and all derivative works, and in the materials licensed by TalkingPoints from third parties ("*Third Party Materials*"), including but not limited to copyrights, patent rights, and trade secrets and all other intellectual property rights, which as may exist now and/or hereafter come into existence.

3.2 Specific Materials. In addition to the Software and its interest in any Third Party Materials, TalkingPoints owns any and all other ideas, concepts, themes, technology, algorithms, programming codes, documentation or other intellectual property or copyrightable material conceived, developed, created, written or contributed by TalkingPoints pursuant to this Agreement ("*Specific Developments*"). Customer will have no rights in the Software, any derivative works, the Specific Developments or Third Party Materials, except the license and related rights expressly set forth in this Agreement.

3.3 License Restrictions. Customer agrees not to (i) alter, merge, modify, adapt or translate the Software or Third Party Materials, or decompile, reverse-engineer, disassemble, or otherwise reduce the Software or Third Party Materials to a human-perceivable form, (ii) sell, rent, lease or sublicense the Software or Third Party Materials or (iii) copy or create derivative works based upon the Software or Third Party Materials.

#### 4. **Data Import**

4.1 Data. TalkingPoints will import all Customer Data for the purposes of text message communication for the participating schools. This data can be obtained via automated process from the Customer's Student Information System ("SIS").

#### 5. **Fees and Payments**

5.1 Invoicing. Customer will pay TalkingPoints fees for the Services as set forth in each Order Form ("Fees"). Unless otherwise specified in an Order Form, all Fees will be invoiced annually in advance and all invoices issued under this Agreement are payable in U.S. dollars within 60 days of receipt of an invoice from TalkingPoints. If applicable, Customer will pay additional payment with regards to additional students due at the start of each quarter. Past due invoices are subject to interest on any outstanding balance of the lesser of 1.5% per month or the maximum amount permitted by law. Customer will be responsible for all taxes associated with Service (excluding taxes based on TalkingPoints' net income). All Fees paid are non-refundable and are not subject to set-off. TalkingPoints accepts payment via check, ACH, and credit card; all check payments must be mailed to TalkingPoints, Dept LA 25293, Pasadena, CA 91185-5293.

5.2 Failure to Make Payment. In the event Customer fails to pay the Fees when due it will constitute a material breach of this Agreement and, upon notice from TalkingPoints, Customer agrees to immediately cease, and to cause End Users to cease, using the Software and TalkingPoints will have no further obligation to provide any maintenance or support to Customer or End Users.

5.3 SMS Fees. Customer may be an organization such as school or school district, who pays for the use of the Services between a teacher of such organization to communicate with their students or parents of students. If the recipient of the service incurs additional charges for receiving text messages, such as text message fees or data fees, then additional charges are payable by the recipient.

#### 6. **Responsibilities**

6.1 TalkingPoints Responsibilities. TalkingPoints is responsible for all development and provision of Software to Customer and its schools, and for maintenance and support for the Software as described in the Order Form. However, TalkingPoints will not be responsible for, nor will it have any liability resulting from (a) modifications to or alterations of the Software or databases by Customer or End Users, unless such modification or alteration is approved in writing by TalkingPoints, or (b) any failure of Customer's or End Users' equipment or software. TalkingPoints agrees not to serve behaviorally targeted ads on any End User.

6.2 Customer Responsibilities. Customer is responsible for selecting schools or organizations to use the Software, and for providing TalkingPoints access to contact information via SIS or otherwise for data import. TalkingPoints relies on Customer and its schools to provide timely, accurate and complete information, to cooperate reasonably with TalkingPoints and to timely complete all tasks assigned to Customer pursuant to the mutually agreed project plan developed at the outset of the project. Customer agrees to prepare and furnish to TalkingPoints upon request such information as is reasonably requested by TalkingPoints in order for TalkingPoints to perform its obligations under this Agreement.

#### 7. **Term, Termination and Extension**

7.1 Term. The Term of this Agreement is defined on the Order Form, subject to renewal upon the mutual agreement of the parties.

7.2 Termination for Convenience. Either party may terminate this Agreement for convenience during the Term with sixty (60) days written notice (email sufficient). If Customer terminates this Agreement pursuant to

this section, TalkingPoints is not responsible for further services or for producing any of the deliverables under the Agreement.

7.3 **Refunds.** If Customer is billed annually, Customer will receive a partial refund of the Fees Customer pre-paid if TalkingPoints terminates this Agreement for any reason other than Customer's breach of this Agreement (or any other terms Customer agreed to with TalkingPoints). Customer's refund excludes, at a minimum, 20% of the Fees, which TalkingPoints will not remit in any situation. Customer's refund will consist of the remaining 80% of all pre-paid fees for each complete month remaining in the Term; Customer will not receive a refund for any portion of the month in which TalkingPoints terminates this Agreement.

7.4 **Termination for Breach.** Either party may terminate this Agreement prior to the expiration of the Term, effective immediately upon written notice to the other party, in the event of a material breach of this Agreement by the other party hereto, if such breach remains uncured for more than thirty (30) days after written notice thereof. In addition, either party may terminate this Agreement upon ten days written notice to the other party upon the occurrence of any one or more of the following: (i) the institution by or against the other party of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of the other party's debts; (ii) the other party making an assignment for the benefit of creditors; or (iii) the other party's dissolution.

7.5 **Rights in Law and Equity Remain.** The foregoing rights to terminate as set forth in this Section 7, are in addition to, not in lieu of, all other rights and remedies which may be available to either party under this Agreement, at law and/or in equity.

7.6 **Renewal.** Any renewal hereto, even if accomplished via a Purchase Order provided by the Customer shall incorporate these Terms and Conditions and those Terms of Service and Privacy Policy available on the TalkingPoints website. TalkingPoints reserves the right to increase the fee for subscriptions to its Services by up to seven percent (7%) year over year whether in the initial Term or subsequent renewal Term(s).

8. **Software Implementation, Data Conversion, Hosting and Training Services.** TalkingPoints agrees to provide the services associated with the implementation of the Software, data conversion, hosting and training of Customer employees on the use of the Software as follows:

8.1 **Hosting.** The Software and Customer's data will be hosted on TalkingPoints's servers (such fees are included in the Annual License Fee).

8.2 **Importing of Data.** TalkingPoints will assist Customer with importing Customer's data into the Software within 45 business days after TalkingPoints is provided reasonable access to usable Customer Data.

## 9. **Ownership and Control of Customer Data**

9.1 **Customer Data.** Customer may import data into the Software ("*Customer Data*"). Customer Data may include records of students, as such data is defined by applicable law ("*Pupil Records*"). Customer will retain ownership of all Customer Data. TalkingPoints may internally use and modify (but not disclose) Customer Data in order to (A) provide the Services to Customer, (B) test, improve and operate TalkingPoints's products and services, and (C) generate Aggregated Anonymous Data (as defined below).

9.2 **Aggregated Anonymous Data.** TalkingPoints may freely use and make available Aggregated Anonymous Data for its business purposes (including without limitation, for purposes of improving, testing, operating, publishing, promoting and marketing its products and services). "*Aggregated Anonymous Data*" means data submitted to, collected by, or generated by TalkingPoints in connection with Customer's and End User's use of the Service, but only in aggregate, anonymized form which can in no way be linked specifically to Customer or End User.

## 10. Bug Fixes and Software Maintenance

10.1 Bug Fixes. TalkingPoints agrees to provide maintenance and support of the Software. Such maintenance and support will include coverage in the form of bug fixes and other corrections to the Software; telephone and e-mail support for questions regarding operations of the Software; change the Software as necessary to incorporate upgrades and new features; support to Customer in resolving problems/errors resulting from misuse or hardware/software failure; and telephone or web conferences with Customer to address future growth or modifications to the Software. Maintenance and support of the Software is provided at no additional cost to Customer.

10.2 Non Covered Fixes. Except as provided in 10.1, TalkingPoints' maintenance of the Software will be at complete discretion of TalkingPoints. TalkingPoints is not responsible for, nor will it have any liability resulting from, (a) modifications to or alterations of the Software or databases by Customer or End Users, unless such modification or alteration is approved in writing by TalkingPoints, or (b) any failure of Customer or End Users equipment or software or (c) quality of the translation services as provided by the Software.

## 11. Confidentiality

11.1 Confidential Information. Each party (the "*Disclosing Party*") may from time to time during the Term disclose to the other party (the "*Receiving Party*") certain information regarding the Disclosing Party's business, including technical, marketing, financial, employee, planning, and other confidential or proprietary information ("*Confidential Information*"). The Software, Third Party Materials and related know-how, technology, system designs, layouts, software, concepts, techniques, data and files will be considered Confidential Information of TalkingPoints. Customer Data will be considered Confidential Information of Customer.

11.2 Protection of Confidential Information. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. Customer acknowledges that the Software is maintained as a trade secret by TalkingPoints, and agrees to use reasonable care in preserving such secrecy, including making such information available only to those End Users required to have access in order to fulfill the purposes of this Agreement.

11.3 Exceptions. The Receiving Party's obligations under this Section 11 with respect to any Confidential Information of the Disclosing Party will terminate if the Receiving Party can demonstrate that such information: (i) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (ii) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (iii) is, or through no fault of the Receiving Party has become, generally available to the public; or (iv) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

11.4 Disposition of Confidential Information. In addition to TalkingPoints's obligations under Section 11, upon termination of this agreement, the Receiving Party will remove all PII of the Disclosing Party in the Receiving Party's possession or control. Upon the written request of the Disclosing Party submitted no later than 45 days following the end of the term of the agreement, the Receiving Party will at Disclosing Party's



option, return to the Disclosing Party the Disclosing Party's data and/or certify in writing that it has fully complied with its obligations under this Section.

Upon the end date of the term of this agreement, unless a renewal agreement has been executed to continue the use of TalkingPoints's product, the Customer's account access will be restricted. Requests for the return of Customer data must be received by TalkingPoints in writing no later than 45 days following contract term end date. On the 90th day following account access restriction, TalkingPoints will remove all Customer's PII in TalkingPoints control.

11.5 Use of Confidential Information. The Receiving Party will not use Confidential Information of the Disclosing Party for any purpose prohibited by law or other than as required or specifically permitted by this Agreement. TalkingPoints further agrees it will not use any personally identifiable information in Customer Data to engage in or facilitate targeted advertising.

11.6 Injunctive Relief. Because monetary damages may not be sufficient to remedy a violation of the provisions of this section, a Disclosing Party will be entitled, upon becoming aware of any such violation and without waiving any other rights or remedies it may have, to seek injunctive or other equitable relief it may deem appropriate.

11.7 Non-Retention Certification. TalkingPoints certifies that, in accordance with this Agreement, Pupil Records will not be retained or available to TalkingPoints or its employees or agents upon completion of the terms of this Agreement. This certification may be enforced by any lawful means, including, without limitation, through civil action.

## 12. Compliance With Applicable Laws

12.1 COPPA. The Children's Online Protection & Privacy Act ("COPPA") regulates the use of data uploaded by children under the age of 13. Customer understands that the Services are not intended for any users under the age of 13. Customer represents and warrants that it has not and will not upload any information to TalkingPoints about a user under the age of 13, or assist an End User in uploading information about a user under age 13. TalkingPoints does not knowingly collect any information from users under the age of 13. If TalkingPoints learns that any information on the services were uploaded by a child under age 13, it will immediately delete that data.

12.2 FERPA. The Family Education Record Protection Act ("FERPA") protects the privacy of student education records. If FERPA applies to Customer (for example, if is a school or school district), it is solely responsible for, and represents and warrants it is in, compliance with FERPA, including by obtaining parental consent for the collection and disclosure of personal information through the Services.

12.3 HIPAA. The Customer will not disclose any information to TalkingPoints that is protected health information ("PHI") subject to the Health Information Portability and Accountability Act ("HIPAA").

12.4 Applicable Laws. Without limiting the foregoing, Customer and TalkingPoints represent and warrant that it will comply with all applicable laws. Further, Customer represents and warrants that its disclosure of any information to TalkingPoints, and/or TalkingPoints' use of such information subject to the restrictions of this Agreement, does not and will not violate any applicable laws.

## 13. Privacy and Collection of Customer Data

13.1 Data Privacy. Each party agrees that it will take all reasonable measures necessary to protect student education records from unauthorized acquisition or release. In the event that any unauthorized acquisition or release of student education records occurs, each party agrees to advise the other promptly upon discovery of such unauthorized acquisition or release and, if required by law, Customer will notify the affected parent,

legal guardian or student (if at least 18 years of age), as applicable, in writing of such unauthorized acquisition or unauthorized release. TalkingPoints will take all legally required actions, including the designation and training of responsible individuals, to ensure the security and confidentiality of Pupil Records. TalkingPoints will identify those employees and subcontractors who will have access to Pupil Records and ensure such individuals receive appropriate instructions as to how to comply with the security and confidentiality requirements of this Agreement with respect to Pupil Records. TalkingPoints warrants that all Pupil Records will be encrypted in transmission and at rest. In addition, TalkingPoints will use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services under this Agreement. If TalkingPoints experiences an unauthorized acquisition or release of Customer's student education records, other than through the fault of Customer, TalkingPoints will take reasonable steps to immediately limit and mitigate such breach, including immediately notifying Customer.

13.2 Sharing of Customer Data. TalkingPoints will not share Customer Data with, or disclose it to, any third party except (i) if such Customer Data constitutes Aggregated Anonymous Data, (ii) as directed by Customer or End Users, (iii) to End Users as contemplated by this Agreement, (iv) to TalkingPoints's subcontractors who need access to fulfill TalkingPoints's obligations under this Agreement and who have agreed to maintain the confidentiality of such information or (v) as required by applicable law. When TalkingPoints believes that any disclosure is required by applicable law, it will promptly notify Customer prior to the disclosure and give Customer a reasonable opportunity to object to the disclosure.

13.3 Storage and Process. TalkingPoints will store and process Customer Data in accordance with commercially reasonable practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use.

13.4 Right to Correct. A parent, legal guardian, or student who has reached 18 years of age may review personally identifiable information in the Pupil Records and correct erroneous information by serving a written request for access or description of the erroneous information and written request for correction upon Customer and furnishing Customer, upon request, such information as is reasonably requested to respond to the request. Customer is responsible for correcting all such erroneous information and TalkingPoints agrees to fully cooperate with Customer to make such corrections.

## 14. **TalkingPoints Warranty**

14.1 Software Warranty. TalkingPoints warrants to Customer that the Software as delivered, will materially comply with the published specifications of TalkingPoints for such Software. TalkingPoints's obligations under this warranty are limited to providing Customer with a copy of corrected Software. TalkingPoints does not warrant that the operation of the Software will be uninterrupted or error-free. IN PARTICULAR, FOR PURPOSES OF THE FOREGOING WARRANTY, TALKINGPOINTS AND CUSTOMER ACKNOWLEDGE THAT THE SOFTWARE IS NOT AND CANNOT BE MADE TO BE 100% ACCURATE, AND THAT ANY ERRORS OR FAILURE TO PERFORM WILL NOT BE DEEMED A BREACH OF SUCH WARRANTY UNLESS THEY ARE SIGNIFICANT AND NOT TO BE EXPECTED IN LIGHT OF THE LIMITATIONS OF SOFTWARE OF THIS TYPE.

14.2 No Other Warranty. EXCEPT AS EXPRESSLY SET FORTH ABOVE, TALKINGPOINTS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO ALL TECHNOLOGY, THIRD PARTY MATERIALS, SOFTWARE OR DERIVATIVE WORKS PROVIDED OR OTHERWISE LICENSED TO Customer IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NON-INFRINGEMENT.

## 15. **Miscellaneous**

15.1 Venue. The venue for any disputes between TalkingPoints and Customer will be the county in which the Customer is located. Certain states may have specific forums in which to address claims, including special tort claim court. If such a state law applies, TalkingPoints and Customer will settle any disputes in accordance with such applicable requirement.

15.2 Relationship of the Parties. Nothing contained in this Agreement will be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties will at all times be that of independent contractors. Neither party will have authority to contract for or bind the other in any manner whatsoever. This Agreement confers no rights upon either party except those expressly granted herein.

15.3 Interpretation. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

15.4 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

15.5 Limitation of Liability. To the extent permissibly by applicable law, and except for breaches of Section 11 (Confidentiality), and Section 3.3 (License Restrictions), in NO EVENT SHALL EITHER PARTY, NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) THE FEES PAID (OR PAYABLE) BY CUSTOMER TO TALKINGPOINTS HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO A CLAIM HEREUNDER.

15.6 Force Majeure. Neither party will be liable to the other for any delay or failure to perform due to causes beyond its reasonable control. Performance times will be considered extended for a period of time equivalent to time lost because of any such delay by providing prompt written notice of such expected delay to the other party.

15.7 Assignment: The obligations of TalkingPoints under this Agreement will not be assigned by TalkingPoints without the express prior written consent of Customer; provided however that TalkingPoints may assign this Agreement without such consent to any affiliate or to a successor to substantially all of its stock, assets, or business to which this Agreement relates.

15.8 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: TalkingPoints certifies to the best of his/her/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 contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>)

15.9 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.

15.10 Counterparts: This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together will be construed as one document.

15.11 Due Authority of Signatories. Each individual signing this Agreement on behalf of a party represents and warrants that he or she has been duly authorized by appropriate action of such party to execute, and thereby bind such party to, this Agreement.