

**DEKALB COUNTY SCHOOL DISTRICT
COOPERATIVE AGREEMENT TO
TIPS RFP 210301 ACADEMIC CURRICULUM AND
INSTRUCTIONAL/EDUCATIONAL GOODS, MATERIALS, AND SERVICES**

DCSD:	DeKalb County School District
Address:	Administrative & Instructional Complex 1701 Mountain Industrial Blvd. Stone Mountain, Georgia 30083
Phone No.:	678-536-6648
DCSD's Representative:	Dr. Myisha Warren, Executive Director Fed. Programs
Vendor:	Everyday Labs, Inc.
Address:	303 Twin Dolphin Dr., 6th Floor Redwood City, CA 94065
Phone No.:	303-921-1475
Vendor Representative:	Nicole Bosworth Ed.D, Senior Director of Strategic Partnerships

THIS COOPERATIVE AGREEMENT (this "Agreement") is entered into as of the last day signed below by the DeKalb County School District ("DCSD") and Everyday Labs, Inc. ("Vendor").

FOR AND IN CONSIDERATION of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, DCSD and Vendor hereby agree as follows:

1. CONTRACT DOCUMENTS: The term "Contract Documents" as used herein shall mean all of the following which are hereby incorporated and made a part of this Agreement. In case of conflict between the document terms, order of control for the documents shall be as follows:

- A. This Cooperative Agreement;
- B. Any Purchase Orders issued pursuant to this Agreement from time to time;
- C. Everyday Labs, Inc. Scope of Work for DCSD (**Exhibit A**);
- D. Everyday Labs, Inc. Data Use Agreement with DCSD (**Exhibit B**);
- E. Any extensions by Department of Texas Education Service Center Region 8 for TIPS RFP 210301 (**Exhibit C**); and
- F. Everyday Labs, Inc. TIPS Vendor Agreement with the Department of Texas Education Service Center Region 8 for TIPS RFP 210301 (**Exhibit D**).

The Contract Documents constitute the entire and exclusive agreement between DCSD and Vendor with respect to the Work, and supersede any and all prior discussions, communications, representations, negotiations or agreements between them with respect to the Work. The Contract Documents are complementary and are to be read as a whole. Any work, labor, materials or equipment that may be required, implied or inferred by the Contract Documents as being required to produce the intended result shall be provided by the Vendor for the Contract Price. Vendor will be held to the highest service standards found within any of the Contract Documents.

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2. LIMITS ON AGREEMENT PRICE AND SCOPE OF WORK: Vendor acknowledges and agrees that this Agreement is for a price no greater than One Hundred and Twenty-One Thousand Seven Hundred and Thirty-Three Dollars (\$121,733.00 USD) per year during the Term. Vendor agrees not to subdivide projects in an effort to evade the provisions of such Law.

3. TERM: The term of this Agreement is for twelve (12) months beginning upon the date this Agreement is last signed (the "Initial Term"). In addition to the Initial Term, this Agreement also contains one (1) one-year optional renewal period (each, a "Renewal Term" and, collectively with the Initial Term, the "Term"), which option may be exercised by DCSD solely in its discretion and upon the receipt of such approvals from DCSD's Board of Education as may be required. The Term is subject to the term of the original contract and shall be shortened according to the provisions and extensions therein. Additionally, as required by O.C.G.A. § 20-2-506, this Agreement shall terminate absolutely and without further obligation on the part of DCSD at the end of the calendar year in which it was executed; provided, however, that this Agreement shall be automatically renewed unless DCSD delivers a notice of non-renewal to Vendor at least thirty (30) days prior to the end of such calendar year, unless this Agreement has otherwise been terminated as provided herein. At the end of the Term, DCSD may elect to have Vendor complete any open Purchase Order or terminate such Purchase Order, in DCSD's sole and absolute discretion. DCSD reserves the right to terminate this Agreement at any time for its convenience upon thirty (30) days written notice to Vendor.

4. VENDOR'S GENERAL RESPONSIBILITIES:

A. In addition to the Vendor's duties, obligations and responsibilities set forth elsewhere in the Contract Documents, pursuant to this Agreement, Vendor shall:

- (1) at all times give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work, and promptly notify DCSD if it observes any Work which conflicts with any such requirements;
- (2) pay all sales, consumer, use and similar taxes for the Work as required by law;
- (3) supervise and direct the Work efficiently and with its best skill and attention, using such means, methods, techniques, sequences and procedures as Vendor deems appropriate, and perform the Work in compliance with the terms and conditions of the Contract Documents and the standard of care applicable to services of the type, scope and complexity to be performed hereunder;
- (4) provide adequate, competent, suitably qualified personnel, labor supervision, equipment, materials, transportation, machinery, tools, appliances, fuel, utilities, sanitary facilities and all other facilities and incidentals necessary or required to perform the Work;

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- (5) provide all materials and equipment to be installed in the Work, which shall be new and in first class condition and which shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processor;
- (6) be fully responsible to DCSD for all acts and omission of any Subcontractors and suppliers or other persons directly or indirectly involved in performing the Work, and ensure that all such Subcontractors and suppliers are paid for such work, and indemnify and defend the DCSD from any claims with respect thereto;
- (7) be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, including all necessary precautions for the safety and protection of, all employees on the Work and others who may be affected thereby, including other structures and areas adjacent to or on or about the Site; and
- (8) cooperate with DCSD's designated representative, provide any requested information and meet, consult and coordinate the Work with DCSD's representative.

B. Vendor Personnel:

- (1) Vendor shall maintain strict discipline among all personnel employed on DCSD grounds, and no person under the influence of drugs or alcohol shall be allowed on DCSD grounds, nor shall any person employed on DCSD's property have in his or her possession any drugs, alcohol or firearms. Unprofessional conduct, including but not limited to horseplay, wrestling, fighting, or the wearing of clothing containing vulgar, immoral or unwholesome words or images or promoting the same, shall not be permitted or allowed. No employee, Subcontractor or representative of Vendor shall use any tobacco product while on DCSD grounds.
- (2) Vendor administrators will provide supervision and training of Vendor personnel. All personnel hired or assigned by Vendor shall be Vendor employees for all purposes and not DCSD employees for any purpose. Vendor shall be solely responsible for (i) selecting and hiring its employees; (ii) paying all wages, health and retirement benefits, all applicable employee and employer taxes and deductions, Social Security taxes, and Medicare taxes, as required by law, and providing general liability insurance coverage covering Vendor and its employees, contractors, and agents under this Agreement, with Limits of Liability as set forth herein, and workers compensation insurance; (iii) supervising, evaluating, promoting and disciplining its employees; (iv) managing the employees' conduct, including the method by which the employees carry out their work; and (v) complying with the Federal Work Authorization Program.
- (3) Vendor employees will not accrue any sick leave or other benefits from DCSD and will not be subject to DCSD's Complaints and Grievances Procedures found in

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District Board Policy or be subject to the due process provisions of O.C.G.A. § 20-2-940 et. seq. as these individuals are not District employees.

- (4) Vendor and its employees, agents, contractors or other such personnel shall be independent contractors of DCSD and do not have the ability or the authority to make obligations on behalf of DCSD.
 - (5) If DCSD believes that the performance or conduct of any person employed or retained by Vendor to perform any services hereunder is unsatisfactory or is not in compliance with the provisions of this Agreement, DCSD will notify Vendor, identifying the conduct or performance in writing and providing all information and support necessary to substantiate and sustain any personnel action requested by DCSD, if any. Vendor will promptly address the performance or conduct of the reported person in accordance with Vendor's disciplinary policies.
 - (6) Vendor must identify any individuals providing services to DCSD who are drawing retirement from the Georgia Teacher Retirement System (TRS). Vendor is responsible for any and all penalties and interests that may be assessed by TRS for any work performed by Georgia TRS retirees. Vendor shall indemnify and hold DCSD harmless from and against any claims related to Georgia TRS.
- C. To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by insurance purchased by the Vendor, the Vendor will indemnify and hold harmless DCSD and its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to extent caused by the negligent acts or omission of the Vendor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation will not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in the Paragraph.

In claims against any person or entity indemnified under this Paragraph by an employee of the Vendor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation will not be limited by a limitation on amount or type of damages, compensation acts, disability benefit acts or other employee benefit acts.

5. DCSD'S RESPONSIBILITIES: The DCSD shall have the right, at its sole discretion, to demand and require that Vendor remove any employee or Subcontractor working on any project and to replace the same, without cost or liability to DCSD.

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6. TERMINATION OF THE AGREEMENT: Either party may terminate this Agreement upon the occurrence of any material breach by the other party to this Agreement by giving written notice of such breach to the breaching party, which notice shall describe the alleged breach. This Agreement will terminate after the receipt of such notice unless the breaching party has cured such breach within ten (10) days from its receipt of such notice or, in the event said breach cannot be cured within ten (10) days, has failed to commence and diligently pursue curing of said breach. In addition, the DCSD may terminate this Agreement for its convenience at any time and for any (or no) reason upon thirty (30) days written notice to Vendor. In either case, all outstanding invoices or monies due for Work performed through the termination date shall be due and payable as of the termination date, less any amounts due to DCSD from Vendor. DCSD further reserves the right to suspend Vendor's performance of the Work should Vendor repeatedly fail or refuse to perform the Work as required herein, and Vendor shall not be permitted to resume work until such deficiencies have been corrected to DCSD's satisfaction.

7. SUBCONTRACTORS: Should Vendor enter into any subcontracts in connection with the performance of the Work, all such subcontracts shall be in writing and shall incorporate all the terms and conditions set forth herein. Vendor will not employ any Subcontractor against whom DCSD may have reasonable exception, and will not make any substitution for any Subcontractor who has been accepted by DCSD except with good cause. Vendor shall be fully responsible for all acts and omission of its Subcontractors. Nothing in this Agreement will create any relationship between DCSD and any Subcontractor. Vendor shall indemnify, defend and hold DCSD harmless from and against any and all claims for payment made by any Subcontractors and shall, within three (3) days of written demand from DCSD, bond off or remove any lien filed against DCSD's property by any Subcontractor. Should Vendor fail and/or refuse to remove any such lien, or should any Subcontractor otherwise notify DCSD of non-payment by Vendor, DCSD may, at its option, make payment jointly to Vendor and its Subcontractor(s).

8. INSURANCE:

A. Vendor shall not commence Work under this Agreement until it has obtained all the insurance required under this Section 8 and delivered certificates of insurance evidencing such coverages to DCSD, nor shall Vendor allow any Subcontractor to commence work on a subcontract until Subcontractor has provided the insurance required hereunder. The insurance required under this Section 8 shall be maintained in full force and effect during the performance of the Work until this Agreement is terminated. DCSD shall be named as an additional insured on all policies (except for Worker's Compensation). The insurance coverages required hereunder are as follows:

- (1) Commercial general liability insurance written on an "occurrence" basis, including coverage for premises/operations, products/completed operations, broad form property damage, blanket contractual liability, independent Vendors and personal insuring, and sudden and accidental pollution, with no exclusions for explosion, collapse and underground perils, with limits of not less than \$1,000,000 per

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occurrence for bodily injury (including death) and property damage and a \$2,000,000 aggregate limit;

(2) Automobile liability insurance, including coverage for owned, non-owned and hired automobiles for both bodily injury and property damage and in accordance with statutory legal requirements, with a combined single limit of not less than \$1,000,000 per accident with respect to bodily injury (including death) and property damage and a \$2,000,000 aggregate limit; and

(3) Workers compensation with statutory limits and employers' liability with limits of not less than \$1,000,000 per occurrence.

B. Vendor waives all rights of subrogation, against DCSD and its board members, officers, employees, agents, insurers, other Vendors and subcontractors and consultants for any damages covered by any type of insurance.

9. IMMIGRATION COMPLIANCE: Vendor and all Subcontractors shall comply with all state and federal immigration laws, rules and regulations, and the Vendor and all Subcontractors shall provide DCSD with the completed, signed and notarized forms required for compliance with the Georgia Security and Immigration Compliance Act, as amended by the Illegal Immigration Reform Act of 2011, O.C.G.A. § 13-10-90 *et seq.*, prior to performance of any Work hereunder.

10. DISPUTE RESOLUTION: All claims, disputes, and other matters in question between the DCSD and Vendor arising, out of, or relation to, this Agreement or the breach hereof, shall be mediated in good faith as a prerequisite to litigation. Either party may file a request for mediation at any time; provided, however, that such mediation shall not take place until after Completion has been achieved. The mediation shall take place in Atlanta, Georgia. Each party shall bear its own costs and expenses in connection with such mediation and the parties shall divide and pay the mediator's fees and expenses equally. Should the parties be unable to resolve any dispute or claim in mediation, either party may file a lawsuit in the Superior Court of DeKalb County, Georgia following the conclusion of the mediation. Each party hereby irrevocably consents to the exclusive jurisdiction of such court and the laying of venue therein.

11. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to its conflicts of law principles.

12. NO WAIVER: No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future detail, whether like or different in character.

13. SEVERABILITY: If any provision of this Agreement, or application thereof to any person or circumstance shall to any extent be invalid, such invalidity shall not affect the enforceability of the remainder of the Agreement or its enforceability in relation to other persons or circumstances.

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14. NO THIRD-PARTIES: Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third-party against DCSD.

15. INDEPENDENT VENDOR: Vendor shall perform as an independent Vendor and not as an employee or representative of DCSD. Vendor retains sole and exclusive liability for all contributions, taxes or payment required to be made on account of Vendor's employees under federal or state tax or labor laws, unemployment and workers' compensation acts, social security acts, and all other legislation requiring employer contributions or withholdings.

16. BACKGROUND CHECKS: A criminal background check must be performed on all contractors, consultants, subcontractors, volunteers and vendors ("Individuals") who provide services on DCSD's premises, supervise services on DCSD's premises or have contact with students. All Individuals shall undergo the same criminal background check, within the last 365 days, as required of DCSD's own employees. Such background checks shall be performed by DCSD at the expense of the Individual at a cost of \$45.00 per person. Upon receipt and evaluation of the background check, DCSD may demand that the Individual have no contact with students or parents, or exclude such Individual from performing work on DCSD's premises or otherwise for DCSD, in its sole and absolute discretion. DCSD may make such determination regardless of whether such charges may have been dismissed, expunged, sealed, removed from the record, treated under "first offender" status or dead docketed. Any failure by Vendor to obtain a criminal background check for any Individual as required herein, may result in the termination of this Agreement without penalty to DCSD.

17. PERSONS UNDER INVESTIGATION: DCSD reserves the right to request that Vendor not permit any Vendor employee, agent or other of its service providers to provide services under this agreement if said person is under investigation for any wrongdoing. Vendor agrees to comply with any request from DCSD to remove said person as a service provider. Vendor agrees to cooperate with DCSD to the fullest extent practicable in any investigation of any actual or alleged misconduct of any Vendor employee or employer in connection with any activity arising out of this Agreement, including allowing access to interviews of Vendor's employees, agents or service providers or any documents related to alleged or suspected misconduct. Vendor agrees to inform DCSD within twenty-four hours that any of its service providers providing services under this Agreement have been arrested, convicted or sued (provided service of summons in a civil action) regarding any allegation related to the performance of their professional duties. Failure to comply with any of the foregoing requests will result in the termination by means of a material default by Vendor under this Agreement.

18. RIGHT TO AUDIT:

- A. Vendor shall maintain complete and accurate books and records with respect to services, costs, expenses, receipts and other information necessary to verify the scope or charges for any services and/or materials provided under this Agreement. Vendor understands and agrees that DCSD has the right to review documents and work in progress and to audit financial and other records pertaining to the performance of the Work under this Agreement, whether such records were prepared by Vendor or anyone

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else associated with the Work. At any time prior to the date which is six (6) years following the final payment under this Agreement, Vendor shall provide DCSD, at DCSD's reasonable expense, a copy of all such records within ten (10) business days of a written request from DCSD. At any time prior to the date which is six (6) years following final payment under this Agreement, DCSD's rights shall also include access at reasonable times to Vendor's facilities for the purpose of interviewing employees and inspecting and copying (at DCSD's reasonable expense) such books, records, accounts and other material which may be relevant to a matter under investigation. Vendor shall, at no cost to DCSD, furnish reasonable facilities and assistance for such review and audit. Vendor's failure to provide records or access within the time requested shall preclude Vendor from receiving any payment under this Agreement until such documents are provided. Vendor agrees to maintain such records for a period of six (6) years following final payment under this Agreement.

- B. To the extent that an audit by DCSD, DCSD's independent auditors or a designee of any of them, discloses excess charges inaccurately or improperly attributed to this Agreement by Vendor, Vendor agrees to remit the amount of the overpayment to DCSD within thirty (30) days after demand.

19. USE OF STUDENT IMAGES: Written parental/caregiver permission must be obtained prior to the release, distribution, or publication of any kind of pictures, media, or recordings of individual minors, or from the parent/caregiver of each minor (or conserved adult) when groups of minors (and/or conserved adults) are depicted. Written permission must likewise be obtained prior to the release, distribution, or publication of any kind of pictures, media, or recordings of individuals over the age of 18 for any students that are not conserved.

20. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF VENDOR: To induce DCSD to enter into this Agreement, and with DCSD's express reliance thereon, Vendor hereby covenants, agrees and represents the following: Vendor is not in financial default in any respect that materially adversely affects any of its properties or businesses, operations, or condition, financial or otherwise, under any existing security agreement, mortgage, security deed, equity agreement, or other agreement or instrument to which Vendor is a party or by which Vendor is contractually bound; and there is no pending or, to the knowledge of Vendor, threatened claim, action, suit, investigation or other proceeding at law or in equity by or before any federal, state, local or other court or governmental agency that materially affects the financial condition or viability of Vendor as a going concern, and there is not any judgment, order, writ, injunction or decree of any such court or agency materially affecting the financial condition or viability of Vendor as a growing concern, or any properties or assets of Vendor (herein collectively referred to as "Material Actions"). Until such time as this Agreement is terminated, Vendor shall provide DCSD prompt written notice of any Material Actions.

21. ENTIRE AGREEMENT; AMENDMENT: The Contract Documents, including any and all exhibits attached hereto which are incorporated herein by reference, represents the entire understanding and agreement between the parties hereto relating to the Work and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding

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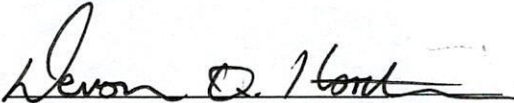
same. No amendment or modification to the Work or this Agreement or any waiver of any provision hereof shall be effective unless in writing signed by the party so to be bound thereby.

IN WITNESS WHEREOF, the parties have caused this Cooperative Agreement to be executed by their duly authorized representative as of the date first set forth above.

DCSD:
DEKALB COUNTY
SCHOOL DISTRICT

VENDOR:

Everyday Labs, Inc.

By: 
Signature

By: 
Signature

Name: Dr. Devon Q. Horton

Name: Emily Bailard

Title: Superintendent

Title: Chief Executive Officer

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EXHIBIT A**

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EXHIBIT B**

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EXHIBIT C**

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EXHIBIT D**