

DESIGN-BUILD ENERGY SERVICES AGREEMENT

THIS DESIGN-BUILD ENERGY SERVICES AGREEMENT (this “Agreement”) is made and effective _____ (the “Effective Date”), by and between **Cambrian School District** (“Owner”), with an address at 4115 Jacksol Drive, San Jose, CA 95124, and **CENTRICA BUSINESS SOLUTIONS SERVICES, INC.**(“Centrica Business Solutions”), with an address at 3 Rosell Drive, Ballston Lake, New York 12019. Owner and Centrica Business Solutions Services, Inc. are sometimes referred to herein, individually, as a “Party”, and, collectively, as the “Parties”.

RECITALS

- A. Owner is a School District incorporated under the laws of the State of California, and is a Public Agency within the meaning of the California Government Code 4217.10 et seq. (“4217 Code”)
- B. Owner owns and operates certain facilities described on the attached Schedule 1 (the “Facilities”), and desires to procure long-term energy cost savings and reduce related expenses in the operation of such Facilities.
- C. Centrica Business Solutions is a New York business corporation and is duly authorized to do business in the State of California, and is a Qualified Provider within the meaning of the 4217 Code, engaged in the business of and having experience and capabilities in providing energy efficiency services, including Energy Conservation Measures (“ECMs”), as defined in the 4217 Code.
- D. Pursuant to Centrica Business Solutions' Proposal, Centrica Business Solutions conducted an investment grade audit and delivered to Owner a detailed engineering and economic proposal (the “IGA Proposal”) that specifically identifies the ECMs that are recommended to be installed and/or implemented at the Facilities.
- E. The Owner Governing Board has determined, in its lawful discretion, prior to approval or ratification of this Agreement, that this Agreement meets all criteria required pursuant to California Government Code 4217.10 et seq.
- F. Pursuant to the IGA Proposal, Owner now desires to enter into this Agreement with Centrica Business Solutions as a Design-Build Energy Services Agreement for the installation and implementation of the ECMs at the Facilities (the “Project”).

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I
PRELIMINARY MATTERS

1.1 INCORPORATION. The Recitals set forth above are hereby incorporated into the body of this Agreement and made a binding part hereof.

1.2 THE IGA PROPOSAL. The IGA Proposal is attached hereto as Exhibit A. Owner acknowledges that it has approved and accepted the IGA Proposal, which identifies all ECMs to be performed under this Agreement.

1.3 CONTRACT DOCUMENTS. The entire agreement of the Parties with respect to the Project is contained in the “Contract Documents”, which consist of: 1) this Agreement ii) any Change Orders or other amendments to this Agreement, and iii) the following Exhibits and Schedules:

- Exhibit A: The IGA Proposal
- Exhibit B; Certificate of Substantial Completion

- Schedule 1: Facilities
- Schedule 2: Scope of ECM Work
- Schedule 3: ECM Work Schedule
- Schedule4: ECM Work Schedule of Values
- Schedule 5: Solar PV Helioscope Models

The provisions of this Agreement shall control in the event of any conflict between its terms and those contained in any of the Exhibits or Schedules

ARTICLE II
SCOPE AND TERM

2.1 SCOPE OF THE PROJECT. The Project shall consist of the “Construction & Installation of ECM’s”, in which the Equipment (as hereinafter defined) will be designed, constructed and/or installed into the Facilities and the ECMs shall be otherwise implemented (the “ECM Work”). The full scope of the ECM Work are set forth and detailed, respectively, on the “Scope of ECM Work” attached as Schedule 2. Centrica Business Solutions shall be responsible for the professional and technical accuracy of the ECM Work, whether performed by Centrica Business Solutions or by subcontractors or others on its behalf.

2.2 TERM. The term of this Agreement (the “Term”) shall commence on the Effective Date, and, unless sooner terminated in accordance with the terms hereof, shall continue for a period of _____ (_____) years, but subject to the termination rights provided in Sections 2.2.1.

ARTICLE III
THE ECM WORK

3.1 CONSTRUCTION AND INSTALLATION OF THE ECM WORK. Subject to the other provisions of this Agreement, Centrica Business Solutions will act as a turn-key design-builder assuming total responsibility for the design, procurement of labor and materials for the improvements to the Facilities, and the installation and start-up of the energy efficiency equipment (the “Equipment”), as set forth in and in accordance with the Scope of ECM Work.

3.1.1 CONSTRUCTION SCHEDULE. The Construction and Installation Phase will commence upon either the issuance by Owner of a written notice to proceed or the written agreement of the Parties fixing such commencement date. The performance of the ECM Work shall be carried out and proceed in accordance with the preliminary schedule (the “ECM Work Schedule”) attached as Schedule 3. The ECM Work Schedule may be amended from time to time by the Parties due to changes in the ECM Work or other events affecting the completion of the ECM Work.

3.1.2 STATUTORY COMPLIANCE. In the performance of the ECM Work, including the installation of the Equipment, Centrica Business Solutions shall, and shall require all of its contractors, subcontractors, and all subcontractors under them to, as applicable, comply with the requirements of all applicable statutes and regulations. Without limiting the foregoing, Centrica Business Solutions shall otherwise give all notices and comply with all laws and ordinances legally enacted at the date of execution of the Agreement that govern the proper performance of the ECM Work.

3.1.3 CALIFORNIA CONTRACTORS’ LICENSE. At all times during performance of Construction Services, Contractor shall be duly licensed and in good standing by the California Contractors State License Board under License #947569.

3.1.4 CONTRACTOR/SUBCONTRACTOR REGISTRATION. Pursuant to Labor Code Section 1771.1, “A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5.” Contractor’s public works contractor registration number, issued by the Department of Industrial Relations is 1000002103.

3.1.5 PERMITS AND APPROVALS. Centrica Business Solutions shall be responsible for obtaining all necessary permits and approvals for the ECM Work, including the installation of the Equipment, and shall pay any and all permit fees. Owner shall use its best efforts to assist Centrica Business Solutions in obtaining all such necessary permits and approvals. The Equipment and the operation of the Equipment by Centrica Business Solutions shall conform to all federal, state and local code requirements in effect at the time of installation. Before Centrica Business Solutions commences any portion of the ECM Work that requires a permit or license, Centrica Business Solutions shall furnish copies of each such permit or license to Owner.

3.1.6 PERFORMANCE. Owner and Centrica Business Solutions shall coordinate the activities associated with the installation of the Equipment by Centrica Business Solutions with any ECM Work or installations of Owner, its employees and agents. Centrica Business Solutions shall not commit or permit any act that will materially interfere with the performance of business activities conducted by Owner or its employees without the prior written approval of Owner, which shall not be unreasonably withheld, and provided that the ECM Work Schedule shall be modified if Owner requires Centrica Business Solutions to delay or re-sequence the ECM Work in order to accommodate Owner's operations. Centrica Business Solutions shall perform all of the ECM Work in such a manner so as not to harm the structural integrity of the Facilities or their operating systems. Centrica Business Solutions shall repair and restore to its original condition any area of damage caused by Centrica Business Solutions' performance under this Agreement. Owner reserves the right to review the ECM Work and to direct Centrica Business Solutions to take corrective action if, in the reasonable opinion of Owner, the structural integrity of the Facilities or its systems is or will be harmed. All costs associated with such corrective action to damage caused by Centrica Business Solutions' performance of the ECM Work shall be borne by Centrica Business Solutions. In addition, Centrica Business Solutions shall be responsible for the professional and technical accuracy of all ECM Work performed, whether by its own forces or by its subcontractors or others on its behalf. Centrica Business Solutions is responsible for general broom cleaning, and shall, to the fullest extent practicable, at all times keep the Facilities clean and free of debris, rubbish and dust. At the completion of the ECM Work, Centrica Business Solutions shall remove from the worksite all construction equipment, tools, surplus materials, waste materials and debris.

3.2 DESIGN AND CONSTRUCTION DOCUMENTS. Drawings, specifications, and other documents, including those in electronic form, furnished or utilized by Centrica Business Solutions are instruments of service (the "Instruments of Service"). Centrica Business Solutions shall retain all common law, statutory and other reserved rights, including copyrights in the Instruments of Service. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to the Project.

3.2.1 Centrica Business Solutions grants to Owner a non-exclusive license to reproduce and use the Instruments of Service solely in connection with the Project, provided that Owner shall comply with all obligations, including prompt payment of sums when due. Owner shall not assign or transfer any license herein to another party without prior written agreement of Centrica Business Solutions. Any unauthorized reproduction or use of the Instruments of Service by Owner or others shall be at Owner's sole risk and expense without liability to Centrica Business Solutions, and its design professionals. Termination of this Agreement due to the default of Owner shall terminate this license. If this Agreement is terminated for any reason other than the default of Owner, Owner shall have a non-exclusive license to use the Instruments of Service for the completion, use and maintenance of the Project. Submission or distribution of Centrica Business Solutions' documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved here.

3.2.2 Centrica Business Solutions shall pay all royalties and license fees that may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by Centrica Business Solutions and incorporated in the ECM Work. Centrica Business Solutions shall defend, indemnify and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner agrees to defend, indemnify and hold Centrica Business Solutions harmless from all suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by Owner.

3.3 WARRANTIES.

3.3.1 Centrica Business Solutions warrants that all materials and equipment furnished under the Construction and Installation Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Scope of ECM Work and all documents associated therewith, and free from defective workmanship and materials. Warranties with respect to the ECM Work, or applicable portion of the ECM Work, as the case may be, shall commence on the date of Substantial Completion thereof (as hereinafter defined). Centrica Business Solutions agrees to correct all ECM Work that is defective in workmanship or materials within a period of one (1) year from the date of Substantial Completion, or such longer periods of time as may be set forth with respect to specific warranties required hereunder.

3.3.2 Centrica Business Solutions shall collect, deliver, and, to the extent permissible, assign all manufacturers' warranties and Equipment manuals to Owner. There are no warranties that extend beyond the description on the face of any such warranty.

3.3.3 EXCEPT AS SET FORTH IN SECTIONS 3.3.1 AND 3.3.2, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. In addition, the warranties under this Section 3.3 shall be void and do not extend to any ECM Work that has been abused, altered, or misused, or that has been repaired by Owner or third parties without the supervisions or prior written approval of Centrica Business Solutions

3.4 SAFETY OF PERSONS AND PROPERTY. Centrica Business Solutions shall endeavor to avoid injury, loss or damage to persons or property by taking reasonable steps to protect: a) its employees and other persons at the worksite, and b) and materials, supplies and equipment stored at the worksite for use in performance of the ECM Work. Centrica Business Solutions shall also oversee the safety precautions and programs of its subcontractors and suppliers at the worksite. Centrica Business Solutions' safety program shall include all actions and programs necessary for compliance with California or federally statutorily mandated workplace safety programs, including without limitation, compliance with the California Drug Free Workplace Act of 1990 (California Government Code 8350 et seq.).

3.5 HAZARDOUS MATERIALS.

3.5.1 A “Hazardous Material” is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up. Centrica Business Solutions shall not be obligated to commence or continue the ECM Work until all Hazardous material discovered at the Project site has been removed, rendered or determined to be harmless by Owner as certified by an independent testing laboratory approved by the appropriate government agency.

3.5.2 If after the commencement of the ECM Work, Hazardous Material is discovered at the Project site, Centrica Business Solutions shall be entitled to immediately stop ECM Work in the affected area. Centrica Business Solutions shall report the condition to Owner and, if required, the government agency with jurisdiction. Owner shall be responsible for retaining any independent testing laboratory to determine the nature of the materials encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effects upon the ECM Work. Centrica Business Solutions shall resume ECM Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency or agencies with jurisdiction.

3.5.3 Centrica Business Solutions shall not be required to perform any ECM Work relating to or in the area of Hazardous Material without written mutual agreement.

3.5.4 If Centrica Business Solutions incurs additional costs and/or is delayed due to the presence or remediation of Hazardous Material, Centrica Business Solutions shall be entitled to an equitable adjustment in compensation and/or the ECM Work Schedule.

3.5.5 To the extent not caused by the negligent acts or omissions of Centrica Business Solutions, or its subcontractors or suppliers, and their agents, officers, and employees of each of them, Owner shall defend, indemnify and hold harmless Centrica Business Solutions, its subcontractors, suppliers, and their agents, officers and employees, from and against any and all claims, damages, penalties, losses, expenses, and other liabilities, including attorney’s fees, arising out of or relating to the performance of the ECM Work in any area affected by Hazardous Material.

3.5.6 During the performance of the ECM Work, Centrica Business Solutions shall be responsible for the proper handling of all materials brought by it to the worksite.

3.5.7 The terms of this Section 3.5 shall survive the completion of the ECM Work and the termination of this Agreement.

3.6 SYSTEMS START-UP AND TRAINING.

3.6.1 Upon Substantial Completion of the ECM Work, with the assistance of Owner's personnel, Centrica Business Solutions shall direct the checkout of Equipment and start-up operations, and adjusting and balancing of Equipment and for readiness. Centrica Business Solutions shall also secure required certificates of inspection, testing or approval and deliver them to Owner.

3.6.2 Centrica Business Solutions shall conduct training specific to the lighting and irrigation controls for facility team and teaching faculty.

3.7 SUBSTANTIAL COMPLETION/FINAL COMPLETION

3.7.1 "Substantial Completion" means that stage in the progress of the ECM Work when the ECM Work, or designated portion thereof, is sufficiently complete in accordance with this Agreement so that Owner can use or occupy the Facilities and utilize the ECM Work or designated portion thereof for its intended use. Upon Substantial Completion, the Parties shall execute a Certificate of Substantial Completion fixing the date of Substantial Completion and listing all unfinished items of ECM Work, in substantially the form attached hereto as Exhibit B.

3.7.2 "Final Completion" means the point when all of the ECM Work is fully and finally complete in accordance with the requirements of this Agreement, and Owner has accepted the ECM Work, which acceptance shall not be unreasonably delayed or conditioned by Owner

ARTICLE IV **OWNER'S RESPONSIBILITIES**

4.1 GENERAL RESPONSIBILITIES.

4.1.1 Upon request of Centrica Business Solutions, Owner shall provide all available information in a timely manner regarding requirements for the Project, including all existing reports or studies regarding the physical characteristics of the site (such as surveys, site evaluations and existing conditions reports), legal descriptions, plans and drawings, building controls, systems, apparatus, equipment and machinery.

4.1.2 Owner shall promptly notify Centrica Business Solutions of all known unusual or materially change operating conditions that affect any Facilities, or any condition that may affect the ECM Work.

4.1.3 Owner shall appoint an authorized representative to facilitate Centrica Business Solutions' performance of the ECM Work. The representative shall:

- a) be fully acquainted with the ECM Work;
- b) shall have authority to bind Owner in all matters requiring Owner's approval,

authorization or written notice. If Owner changes its representative or the representative's authority as listed above, Owner shall notify Centrica Business Solutions in advance.

4.2 RESPONSIBILITIES DURING CONSTRUCTION & INSTALLATION PHASE.

4.2.1 Owner shall review the ECM Work Schedule as set forth in Section 3.1.1, timely approve any milestone dates set forth, and timely respond to its obligations thereunder.

4.2.2 Owner shall provide sufficient space at the site for the performance of the EPC Work. Owner shall provide access to the site and Facilities for Centrica Business Solutions to perform any function related to this Agreement during regular business hours, and at such other reasonable times as may be requested by Centrica Business Solutions. Owner shall not unreasonably restrict Centrica Business Solutions' access to the site or Facilities to make emergency repairs or corrections as Centrica Business Solutions may determine are needed.

4.2.3 Owner shall provide inspection and testing services during construction as required by law or as mutually agreed.

4.2.4 Contractor shall have no responsibility for compliance with the California Environmental Quality Act, other than as may be expressly included in the Scope of Work in order to comply with mitigation measures designated by Owner.

4.2.5 Contractor and the Owner acknowledge that under California Government Code 4215, the Owner assumes the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site which are not identified in the Drawings, Specifications or other Contract Documents. Prior to commencing any underground work on this Project, Contractor shall: take all reasonable steps to confirm the location of such utility facilities sufficient to assure itself that no conditions exist at or about the Site which would require revision to the Scope of Work, Contract Price, dates for Substantial or Final Completion, or any other material provision of this Agreement; and, contact Underground Service Alert of Northern California ("USA") and arrange to have the project area marked by USA for underground utilities. In addition, Contractor shall review the Owner's as-built drawings, survey's and other site documents produced and/or made available to Contractor to locate and verify all underground utilities or other underground obstacles or site conditions. In the event that underground utilities or other underground obstacles or site conditions are discovered by Contractor that were not reflected in the results of the USA underground service inspection or in the Owner's as-built drawings, survey's and other site documents produced to Contractor, such matters shall be deemed unforeseen circumstances and Contractor shall be entitled to a reasonable extension of time and a reasonable increase in the Contract Price based upon the time and increased costs and expenses incurred by Contractor as a result of such inaccuracies. Contractor and the Owner agree that the provisions of California Government Code 4215 requiring that the utilities be identified in the invitation for bids shall not apply to this Agreement insofar as Contractor has the responsibility for design of the Project as well as construction of the Project. Rather, Contractor and the Owner agree

that the scope of Contractor's responsibilities relating to design of the Project includes review of Owner-provided existing condition information and interface with Underground Service Alert.

4.2.6 If Owner becomes aware of any error, omission or failure to meet the requirements of this Agreement or any fault or defect in the ECM Work, Owner shall give prompt written notice to Centrica Business Solutions

ARTICLE V **COMPENSATION AND PAYMENT**

5.1 COMPENSATION FOR THE ECM WORK.

5.1.1 For the performance of the ECM Work, and all obligations in connection therewith under this Agreement, Owner agrees to pay Centrica Business Solutions Services, Inc. the following sum (the "ECM Work Price"): three million, eight hundred thirty thousand, seven hundred and eight dollars (**\$2,260,671**). A detailed "ECM Work Schedule of Values", setting forth the breakdown of the total ECM Work Price, is attached hereto as Schedule4.

5.1.2 Based upon itemized applications for payment submitted to Owner by Centrica Business Solutions during the Construction and Installation Phase, Owner shall make payment to Centrica Business Solutions of the ECM Work Price as follows:

- a) The period covered by each application for payment shall be one calendar month ending on the last day of the month. Provided an application for payment is received by Owner not later than the 5th day of a month, Owner shall make payment pursuant to such application to Centrica Business Solutions not later than the 20th day of the same month. If an application for payment is received by Owner after the application date fixed above, payment shall be made by Owner not later than twenty (20) days after receipt of the application for payment.
- b) Each application for payment shall provide such detail and back-up information or data as Owner may reasonably require, and shall be based upon the ECM Work completed and materials stored on site and/or at locations approved by Owner in its reasonable discretion for the period ending on the last day of the applicable month. The ECM Work Schedule of Values shall be used in establishing percentages of completion in payment applications.
- c) Final payment, constituting the entire unpaid balance of the ECM Work Price, shall be made by Owner to Centrica Business Solutions within fifteen (15) days of the date of Final Completion.

- d) Payments due and unpaid shall bear interest from the date due at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE VI **CHANGES**

6.1 CHANGE ORDERS. Changes in the ECM Work that are within the general scope of this Agreement, and that are not minor changes in the ECM Work, shall be accomplished without invalidating this Agreement by a written instrument executed by both Parties in accordance with this Article VII (a “Change Order”). Centrica Business Solutions may request or Owner may order changes in the ECM Work within the general scope of this Agreement consisting of adjustment to the ECM Work Price, or the ECM Work Schedule. All such changes in the ECM Work shall be authorized by applicable Change Order.

6.1.1 Owner and Centrica Business Solutions shall negotiate in good faith an appropriate adjustment, as applicable, to the ECM Work Price and/or the ECM Work Schedule, and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the ECM Work Price, and/or ECM Work Schedule shall not be unreasonably withheld. An increase or decrease in the ECM Work Price resulting from a change in the scope of the ECM Work shall be determined by one or more of the following methods:

- a) unit prices set forth in this Agreement or as subsequently agreed;
- b) a mutually accepted, itemized lump sum; or
- c) if an increase or decrease cannot be agreed upon as set forth in this Section 7.1, the adjustment in the ECM Work Price shall be determined by the reasonable expense and savings of the performance of the ECM Work resulting from the change. If there is a net increase in the ECM Work Price, then a reasonable adjustment shall be made for Centrica Business Solutions' overhead and profit. In the case of a net decrease in cost, the amount of the decrease in the ECM Work Price shall not include reduction for overhead and profit.

6.2 MINOR CHANGES IN THE ECM WORK. Centrica Business Solutions may make minor changes in the design and construction of the ECM Work consistent with the intent of this Agreement that do not involve an adjustment in the ECM Work Price or the ECM Work Schedule, so long as such changes do not materially and adversely affect the ECM Work, the quality of the materials or equipment specified herein, the performance of any materials, equipment or systems specified herein, or the quality of the workmanship required by this Agreement.

6.3 UNKNOWN CONDITIONS. If in the performance of the ECM Work Services Centrica Business Solutions finds latent, concealed or other conditions that materially differ from the conditions Centrica Business Solutions reasonably anticipated, or if the physical conditions are

different from those normally encountered and generally recognized as inherent in the kind of ECM Work provided for in this Agreement, then the ECM Work Price shall be equitably adjusted, and, as applicable, the ECM Work Schedule shall be appropriately modified, by a Change Order within a reasonable time after the conditions are first observed. Centrica Business Solutions shall provide Owner with written notice of its discovery of any of the foregoing conditions as soon as practicable after such discovery.

6.4 EMERGENCIES. In any emergency affecting the safety of persons or property, Centrica Business Solutions shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the ECM Work Price, or ECM Work Schedule on account of such emergency ECM Work shall be determined as provided in this Article VII.

6.5 CHANGES IN LAW. In the event any changes in laws or regulations affecting the performance of the ECM Work are enacted after the date of this Agreement, the ECM Work Price, and/or the ECM Work Schedule shall be equitably adjusted by Change Order.

6.6 MATERIAL CHANGES.

6.6.1 Definition. A “Material Change” is any change in or to the Facilities, whether structural, operational or otherwise in nature that reasonably can be expected, in the judgment of Owner and Centrica Business Solutions to decrease annual energy savings in accordance with the provisions and procedures set forth in the proposed energy savings after adjustments for climatic variations. Actions by Owner that may result in a Material Change include, but are not limited to the following;

- a) The manner of use of the Facilities by Owner;
- b) The hours of operation for the Facilities or for any Equipment or energy using systems operating at the Facilities;
- c) Permanent changes in the comfort and service parameters set forth in Scope of ECM Work (Schedule 2);
- d) Occupancy of the Facilities;
- e) The structure of the Facilities;
- f) The types and quantities of equipment used at the Facilities;
- g) The modification, renovation or construction at the Facilities (other than the ECM Work);
- h) Owners’ failure to provide maintenance of and repairs to the Equipment; or
- i) Any other conditions other than climate affecting energy use at the Facilities.

6.6.2 Reported Material Changes. Owner shall use best efforts to deliver to Centrica Business Solutions a written notice describing all actual or proposed Material Changes at least thirty (30) days prior to the implementation of such Material Change, or as soon as is practicable after an emergency or other unplanned event. After Centrica Business Solutions' review of the notice, the Parties shall meet as soon as practicable to agree upon adjustments to the proposed energy savings, which adjustments shall be set forth in a Change Order.

ARTICLE VII **TERMINATION**

7.1 TERMINATION BY OWNER FOR CAUSE. Upon thirty (30) days' advance written notice to Centrica Business Solutions, Owner may terminate this Agreement for Cause (as hereinafter defined) if after giving Centrica Business Solutions written notice of such Cause, Centrica Business Solutions fails to cure the same within thirty (30) days following receipt of such notice or, if such cure cannot reasonably be effected within thirty (30) days, such cure is undertaken within such time period and is thereafter continued diligently until completion.

7.1.1 For purposes of this Agreement, "Cause" shall mean the occurrence of any of the following:

- a) Any material failure on the part of Centrica Business Solutions to perform or comply with the terms and conditions of this Agreement; or
- b) The commencement by or on behalf of Centrica Business Solutions of any voluntary or involuntary case or matter relating to or associated with the U.S. Bankruptcy Code, or for liquidation, reorganization, or an arrangement pursuant to any other U.S. or state bankruptcy Laws, or Centrica Business Solutions being adjudicated a debtor or declared bankrupt or insolvent under the U.S. Bankruptcy Code, or any other U.S. Federal or state laws relating to bankruptcy, insolvency, winding-up, or adjustment of debts, or Centrica Business Solutions making a general assignment for the benefit of creditors, or admitting in writing its inability to pay its debts generally as they become due, and/or if a custodian, receiver, trustee or liquidator of Centrica Business Solutions, all or substantially all of the assets or business of Centrica Business Solutions or of Centrica Business Solutions' interest in this Agreement, is appointed in any proceeding.

7.1.2 If termination occurs during the Construction and Installation Phase, Owner shall be responsible for paying for all ECM Work performed by Centrica Business Solutions through the effective date of termination, and Owner may deduct from the amount due to Centrica Business Solutions the reasonable cost to Owner of any necessary remediation required with respect to the matters resulting in such termination. In the event that Centrica Business Solutions is terminated by Owner under this provision and it is later determined that such termination was improper, Centrica Business Solutions shall be entitled to the remedies set forth in Section 8.3 below.

7.2 TERMINATION BY CENTRICA BUSINESS SOLUTIONS SERVICES, INC.

7.2.1 Upon ten (10) days' advance written notice to Owner, Centrica Business Solutions may, in addition to any other rights or remedies, terminate this Agreement for any of the following reasons:

- a) If the ECM Work has been stopped for at least thirty-day period under court order or order of other governmental authorities having jurisdiction, or as a result of the declaration of a national emergency or other governmental act during which, through no fault of Centrica Business Solutions, materials, supplies, tools, and construction equipment and machinery for the ECM Work are not available;
- b) If Owner has failed to pay any compensation due to Centrica Business Solutions in accordance with this Agreement for a period of thirty (30) days or more;
- c) If the ECM Work has been suspended for any reason by Owner for a continuous period exceeding sixty (60) days;
- d) If Owner has materially hindered or delayed Centrica Business Solutions in the performance of any of its obligations, or Owner has otherwise has materially breached any covenant, agreement, warranty or representation set forth in this Agreement, and if after giving Owner written notice of thereof Owner fails to cure the same within thirty (30) days following receipt of such notice or, if such cure cannot reasonably be effected within thirty (30) days, such cure is undertaken within such time period and is thereafter continued diligently until completion.

7.2.2 Upon such termination, Centrica Business Solutions shall be entitled to recover from Owner as provided in Section 7.3.

Upon the payment of amounts due under this Section 7.2, neither Party shall have any further liability to the other except for those obligations expressly specified in this Agreement to survive its termination.

7.3 TERMINATION BY OWNER WITHOUT CAUSE.

7.3.1 If Owner terminates this Agreement other than pursuant to Section 7.1, Centrica Business Solutions shall be entitled to recover from Owner as follows:

- a) If termination occurs during the Construction and Installation Phase, Owner shall be responsible for paying for all ECM Work performed by Centrica Business Solutions through the effective date of termination;

- b) Owner shall pay for all demobilization costs incurred by Centrica Business Solutions, and purchase or rental costs incurred by Centrica Business Solutions, for any equipment acquired by the Centrica Business Solutions in connection with the ECM Work;

7.3.2 In addition to the foregoing, Owner shall further assume and become liable for obligations, commitments, and unsettled claims that Centrica Business Solutions has previously undertaken or incurred in good faith on behalf of Owner in connection with the Project hereof.

ARTICLE VIII **INDEMNIFICATION/INSURANCE/BONDING/WAIVERS**

8.1 INDEMNIFICATION.

8.1.1 Centrica Business Solutions shall indemnify and hold Owner and its employees harmless from and against all third party claims, losses, or damages arising from the performance of the ECM Work provided that the same are attributable to bodily injury, death and/or damage to property, but only to the extent caused by the negligent, reckless or wrongful acts or omissions acts or omissions of Centrica Business Solutions or anyone for whose acts Centrica Business Solutions is liable. In no event shall this indemnification apply to liability to the extent caused by the negligence or willful misconduct of the party to be indemnified or held harmless. This indemnification shall not be limited to damages, compensation or benefits payable under insurance policies, any worker's compensation act, or other employee benefit acts.

8.1.2 Owner shall indemnify and hold Centrica Business Solutions and its employees and subcontractors and agents harmless from and against all third party claims for bodily injury, death, and/or damage to property (excluding damage for which Owner assumes the risk of loss or damage to the ECM Work itself) that may arise in connection with the Project but only to the extent caused by the negligent, reckless or wrongful acts or omissions acts or omissions of Owner or anyone for whose acts Owner is liable. In no event shall this indemnification apply to liability to the extent caused by the negligence or willful misconduct of the party to be indemnified or held harmless. This indemnification shall not be limited to damages, compensation or benefits payable under insurance policies, any worker's compensation act, or other employee benefit acts.

8.2 CENTRICA BUSINESS SOLUTIONS SERVICES, INC.'S INSURANCE. At all times during the Term, Centrica Business Solutions shall provide and maintain the insurance set

forth in this Section 8.2. All insurers shall be authorized and licensed to provide insurance in the State of California, and shall be rated as A- or better by A.M. Best

8.2.1 Workers' Compensation. Centrica Business Solutions shall obtain and maintain Worker's Compensation insurance with statutory limits and Employers' Liability insurance in the amount of \$1,000,000.

8.2.2 Commercial General Liability. Centrica Business Solutions shall obtain and maintain Commercial General Liability Insurance written on an occurrence basis, with the following limits:

Each Occurrence Limit:	\$1,000,000
General Aggregate Limit:	\$2,000,000
Products/Completed Operations Aggregate Limit:	\$2,000,000
Personal and Advertising Injury Limit:	\$1,000,000
Medical Pay:	\$5,000

8.2.3 Automobile Liability. Centrica Business Solutions shall obtain and maintain Business Automobile Liability Insurance covering owned, non-owned, and hired automobiles, with the following limits:

Combined Single Limit Bodily Injury and Property Damage:	\$1,000,000 Each Occurrence
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8.2.4 Professional Liability. Centrica Business Solutions shall obtain and maintain professional liability or errors & omissions insurance for claims arising from the negligent performance of any professional Services under this Agreement, which shall be General Office Coverage, with the following limits:

Per claim:	\$1,000,000
Aggregate:	\$2,000,000

8.2.5 Excess Umbrella. All liability insurance may be arranged under a single policy for the full limits required or by a combination of primary, excess, and/or umbrella liability policies.

8.2.6 Policy Terms. Owner shall be named as an additional insured on all coverage obtained to the extent of the negligence of Centrica Business Solutions under all liability

policies except Professional Liability and Workers' Compensation, on a primary and non-contributory with respect to any liability coverage maintained by Owner. Centrica will not cancel coverage without at least thirty (30) days' prior written notice has been given to Owner. Upon request, a certificates of insurance showing such coverage will be provided to Owner.

8.3 OWNER'S INSURANCE.

8.3.1 Liability Insurance. Owner shall obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement.

8.3.2 Property Insurance.

- a) Owner shall obtain and maintain Builder's Risk or equivalent property insurance in a form reasonably acceptable to Centrica Business Solutions upon the entire Project, including the Equipment and the Facilities and all other existing structures in which any of the ECM Work is to be performed, as well as all Project structures that are fully or partially owned or occupied by Owner or its affiliates, for the full cost of replacement at the time of any loss. This insurance shall include as insureds Owner, Centrica Business Solutions, Centrica Business Solutions' subcontractors, and all other subcontractors and suppliers, as their interests may appear. This insurance shall insure against loss from the perils of fire and extended coverage, and shall include "all risk" coverage including at a minimum coverage for theft, vandalism, malicious mischief, inland transit, collapse, temporary buildings, debris removal, flood, earthquake, wind, testing, and damage resulting from defective design, workmanship, or material. Owner shall increase limits of coverage, if necessary, to reflect estimated replacement cost. Owner shall be responsible for all premiums and any co-insurance penalties, exclusions, sublimits, or deductibles.
- b) On or before the Substantial Completion Date, Owner shall procure and thereafter maintain at all times during the Term, at its sole cost and expense a policy or policies of property damage insurance on all fixtures and improvements and betterments to the Facilities, including the Equipment, against any peril generally included within the classification "all risks", including, but not limited to, risks covered by fire, extended coverage, vandalism and malicious mischief, in amounts at least equal to the full replacement cost thereof (without deduction for depreciation). Such coverage shall include boiler and machinery and equipment breakdown insurance. Centrica Business Solutions shall be included as an insured or loss payee on all such policies, as its interests may appear.

8.3.3 Policies. Upon Centrica Business Solutions' request, Owner shall provide Centrica Business Solutions with a copy of all policies including all endorsements thereto. Centrica

Business Solutions shall be given thirty (30) days' prior written notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage.

8.3.4 Loss Adjustment. Any insured loss shall be adjusted with Owner and Centrica Business Solutions and made payable to Owner as trustee for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

8.4 WAIVER OF CLAIMS AND SUBROGATION.

8.4.1 Property Damage. Owner and Centrica Business Solutions waive all claims and other rights they may have against each other for loss of and/or damage to (i) the Project, including the Equipment and Facilities, (ii) all materials, machinery, equipment, and other items used in accomplishing the ECM Work and/or to be incorporated into the Project, while the same are in transit, at the Project site, during erection, and otherwise, and (c) all property owned by or in the custody of Owner and its affiliates, however such loss or damage shall occur, except the rights each Party has to the proceeds of such insurance held by Owner as trustee in accordance with Section 8.3.4.

8.4.2 Waiver of Subrogation. Owner and Centrica Business Solutions shall have their respective insurers waive all rights of subrogation they may have against one another for claims arising thereunder. If the policies of insurance referred to in this Article VIII require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Parties will cause them to be so endorsed.

8.4.3 Damages Waiver. Owner and Centrica Business Solutions waive all claims against the other for all special, indirect, consequential, remote, punitive, exemplary, or similar damages that may arise out of or relate to this Agreement. This waiver includes, but is not limited to, Owner's loss of use of the Facilities, all rental expenses incurred, loss of services of employees, or loss of reputation, and Centrica Business Solutions' loss of business, loss of financing, principal office overhead and profits, loss of profits not related to this Project, or loss of reputation. The provisions of this Section 8.4.3 shall survive the termination of this Agreement.

8.4.4 Limitation of Liability. The Parties have discussed the risk and rewards associated with the ECP Work. The Parties agree that Centrica Business Solutions shall procure and maintain insurance policies with such coverages and amounts and for such periods of time as required by this Agreement. In light of the foregoing, Owner agrees that Centrica Business Solutions' liability under this Agreement, regardless of the form of action, shall in no event exceed the amount of the compensation actually received by Centrica Business Solutions pursuant to Section 5.1 of this Agreement. The provisions of this Section 8.4.4 shall survive the termination of this Agreement.

8.5 BONDING.

8.5.1 Performance and Payment Bonds are required of Centrica Business Solutions as a condition to the commencement and performance of the ECM Work. All Bonds must be

acceptable to Owner, and its reasonable discretion, and shall: i) be issued by good and sufficient sureties licensed in the State of California, ii) The Surety on any bond required under the Contract Documents shall be an Admitted Surety Insurer as that term is defined in California Code of Civil Procedure 995.120.

ARTICLE IX **CASUALTY AND CONDEMNATION**

9.1 CASUALTY.

9.1.1 After the Substantial Completion Date, Owner assumes and shall bear the risk of damage, loss, theft, or destruction, partial or complete, of the Equipment and the Facilities (a “Casualty Loss”), however arising, except to the extent that the same may be caused by the negligent or willful acts or omissions of Centrica Business Solutions that not covered by insurance to be procured pursuant to this Agreement. If Owner fails to repair or replace any Casualty Loss within a reasonable time, and in no event more than one hundred twenty (120) days from its occurrence (except to the extent that the same is the responsibility of Centrica Business Solutions in accordance with the foregoing), Centrica Business Solutions may, at its option: (i) terminate this Agreement by delivery of a written notice to Owner, and such termination shall be deemed a termination without Cause and will be subject to the provisions of Section 7.3 hereof, or (ii) require Owner to amend this Agreement in a manner that equitably accounts for the loss of such Equipment and/or Facilities.

9.1.2 In the event of a Casualty Loss caused by the negligent or willful acts or omissions of Centrica Business Solutions that is not covered by insurance to be procured pursuant to this Agreement, Owner may require Centrica Business Solutions to promptly repair or replace the damaged or destroyed Equipment and/or Facilities, and in the event of Centrica Business Solutions' failure to do so, Owner may, at its option: (i) repair or replace such items and recover the reasonable cost thereof from Centrica Business Solutions, or (ii) terminate this Agreement for Cause pursuant to Section 7.1 hereof.

9.2 CONDEMNATION.

9.2.1 In the event of the condemnation resulting in a taking of substantially all of the Facilities, this Agreement shall terminate upon the effective date of such taking, and such termination shall be deemed a termination without Cause in accordance with Section 7.3 hereof, provided, however, that the proceeds of such condemnation shall belong to Owner.

9.2.2 In the event of a condemnation resulting in a taking of less than substantially all of the Facilities, the Parties shall amend this Agreement in a manner that equitably accounts for such taking.

ARTICLE X **COMPLIANCE OBLIGATIONS**

10.1 STATUTORY AND REGULATORY COMPLIANCE. Centrica Business Solutions will comply with all applicable provisions of federal, state and local law when performing the ECM Work. Where required by law, all drawings, plans, reports, and other documents delivered to Owner as part of the ECM Work must bear the stamp or seal of architects or engineers licensed by the State of California.

10.2 FAILURE TO COMPLY. If Centrica Business Solutions performs and ECM Work knowing or having reason to know that such Work or Services are contrary to applicable laws, rules and/or regulations, Centrica Business Solutions shall be responsible for payment of all reasonable costs and expenses arising therefrom.

ARTICLE XI **GENERAL PROVISIONS**

11.1 NOTICE. All notices required under this Agreement shall be in writing and shall be given either by: (i) personal delivery; or (ii) a nationally-recognized overnight delivery service that provides proof of delivery and addressed to the other Party at such Party's address specified below. Such address may be changed by a Party giving notice thereof in accordance with this provision.

To Owner: Cambrian School District
4115 Jacksol Drive
San Jose, CA 95124
Attn: John Pappalardo

To: Centrica Business Solutions Services, Inc.
3 Rosell Drive, Ballston Lake
New York 12019
Attn: Christopher Covell

11.2 INDEPENDENT CAPACITY. The Parties agree that Centrica Business Solutions is an independent contractor, and that Centrica Business Solutions and its employees and agents, shall act in an independent capacity in the performance of this Agreement, and shall not be construed as officers, employees, or agents of Owner. In addition, this Agreement shall not be construed as creating any partnership or joint venture between the Parties.

11.3 FORCE MAJEURE. If causes beyond a Party's reasonable control delay, impair or prevent the performance of any of such Party's obligations hereunder, expressly excepting, however, the payment of money, the time for such performance shall be extended for a reasonable period of time commensurate with the time and nature of the cause. Such causes shall include, but not be limited to: changes ordered in the ECM Work, acts or omissions of the other Party or others beyond the control of the Party whose performance is required, adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, general labor disputes impacting the ECM Work, acts of governmental agencies, or unavoidable accidents or circumstances, Hazardous Materials or differing site conditions.

11.4 FURTHER DOCUMENTS. The Parties agree to execute and deliver all further documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

11.5 GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. The titles of the various Sections of this Agreement and elsewhere in the Contract Documents are used for convenience of reference only and are not intended to, and shall in no way, enlarge or diminish the rights or obligations of the Owner or Contractor and shall have no effect upon the construction or interpretation of the Contract Documents. The Contract Documents shall be construed as a whole in accordance with their fair meaning and not strictly for or against the Owner or Contractor.

11.6 SEVERABILITY. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

11.7 NO WAIVER OF PERFORMANCE. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights hereunder, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

11.8 INTERPRETATION. The Parties agree that the following shall govern the interpretation of this Agreement:

11.8.1 Headings and captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

11.8.2 The grouping of the articles in this Agreement and of specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions.

11.8.3 The terms “herein,” “hereof” and “hereunder,” and words of similar import, refer to this Agreement as a whole and not to any particular Section, Subsection or Schedule or Exhibit.

11.8.4 The Parties have participated jointly in the negotiation and drafting of this Agreement, and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions hereof.

11.9 CENTRICA BUSINESS SOLUTIONS SERVICES, INC. PROPERTY. All property used by Centrica Business Solutions in connection with the ECM Work, including equipment, tools, drawings, designs, documentation, schematics, test equipment, software, and associated media remain the exclusive property of Centrica Business Solutions. Owner agrees not to use such property for any purpose at any time. Owner agrees to allow Centrica Business Solutions personnel to retrieve and to remove all such materials remaining after the ECM Work has been

completed or at the end of the Term. Owner acknowledges that any Centrica Business Solutions software included in the ECM Work is proprietary and will be delivered only after execution of and pursuant to a Centrica Business Solutions standard licensing agreement.

11.10 BINDING EFFECT. This Agreement and the Contract Documents shall inure to the benefit of, and be forever binding upon, the Parties and their respective successors, legal representatives and permitted assigns.

11.11 AMENDMENT. This Agreement may be amended, modified or supplemented only by written agreement signed by the Parties.

11.12 ASSIGNMENT. Centrica Business Solutions acknowledges that Owner is induced to enter into this Agreement by, among other things, the qualifications of Centrica Business Solutions. Accordingly, Centrica Business Solutions agrees that this Agreement shall not be assigned in whole or in part to another person or entity, without the prior written approval of Owner.

11.13 ENTIRE AGREEMENT. This Agreement, including all Schedules and Exhibits hereto, constitutes the entire agreement and understanding of the Parties and supersedes all prior agreements and understandings between the Parties with respect to the subject matter hereof. Each Party acknowledges that no Party has made any promises, representations, warranties, covenants or understandings other than those expressly set forth herein.

11.14 EXECUTION. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The transmission of the signature of a Party by facsimile, email or other electronic means shall be deemed an original thereof by the Party receiving such signature.

11.15 SUCCESSORS AND ASSIGNS. Except as otherwise expressly provided in the Contract Documents, all terms, conditions and covenants of the Contract Documents shall be binding upon, and shall inure to the benefit of the Owner and Contractor and their respective heirs, representatives, successors-in-interest and assigns.

11.16 NO WAIVER OF PERFORMANCE. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights hereunder, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance..

11.17 GENDER AND NUMBER. Whenever the context of the Contract Documents so require, the neuter gender includes the feminine and masculine, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular.

11.18 INDEPENDENT CONTRACTOR STATUS. Contractor is an independent contractor to the Owner and not an agent or employee of the Owner.

11.19 PROVISIONS REQUIRED BY LAW DEEMED INSERTED. Each and every provision of law and clause required by law to be inserted in the Contract Documents is deemed to be inserted herein and the Contract Documents shall be read and enforced as though such

provision or clause are included herein, and if through mistake, or otherwise, any such provision or clause is not inserted or if not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the Effective Date.

CENTRICA BUSINESS SOLUTIONS SERVICES, INC.

By: _____
Name: Trevor Nelson
Title: General Manager, West Business Unit

CAMBRIAN SCHOOL DISTRICT

By: _____
Name: John Pappalardo
Title: Chief Financial Officer