

# Memorandum of Understanding

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This is a Memorandum of Understanding (“MOU”), dated as of \_\_\_\_\_, 20\_\_\_\_, between Client (“Client”), a California nonprofit corporation, and \_\_\_\_\_ (“Collaborator”), a \_\_\_\_\_.

## Background

Client’s mission is to \_\_\_\_\_. Collaborator shares those goals and, in line with that commitment, Client and Collaborator have agreed that Collaborator may use Client’s facilities for a program (“Program”) on the basis set out in this MOU.

## 1. Program

### 1.1 Activities

Collaborator will carry out the Program as set out in the program plan (“Plan”) attached as **Exhibit A**. Collaborator may use Client’s facility (“Facility”) in the specific location(s) (“Space”) and on the dates and times specified in the Plan.

### 1.2 Term

This MOU will remain in effect during the period set out in the Plan (“Term”), unless renewed under Section 1.3 or terminated earlier under Section 8.

### 1.3 Renewal

If Collaborator wishes to renew this MOU, Collaborator must notify Client in writing at least 60 days before the end of the Term, and Collaborator and Client will meet to discuss the request. For clarity, Client may choose to accept or reject Collaborator’s request for renewal at Client’s sole discretion. If Collaborator and Client agree to a renewal, this MOU will continue in effect for the period, and with such modifications, as the parties may agree. Absent such an agreement on renewal, any continuation of Program activities by Collaborator after the end of the Term will be considered as a month-to-month extension on the terms set out in this MOU, terminable as provided in Section 8. Any holding over is not a renewal for purposes of this Section 1.3.

### 1.4 Fees

Collaborator will pay fees to Client in the amount(s) and on the date(s) if and as set out in the Plan.

### 1.5 Personnel and Volunteers

The Plan sets out the staffing for the Program. Collaborator will carry out background checks or other screening protocols on its Program staff as contemplated by the Plan.

### 1.6 Program Changes

If either Client or Collaborator believes the Plan should be adjusted in any respect, it will so advise the other of the proposed changes. Client and Collaborator will discuss the proposed adjustment and, if they agree on an adjustment, confirm and document the adjustment in the form provided as **Exhibit B**.

## 2. Conduct and Youth Safety

### 2.1 Facility Policies

Collaborator will comply with Client Facility policies and procedures (including, without limitation, those relating to interactions with youth, youth data, and harassment and discrimination) as may be adopted by Client. Client may in its sole discretion revise such policies and procedures from time to time.

## **2.2 Health and Safety Protocols**

Collaborator will comply with all Client health and safety guidelines and protocols (including, without limitation, those relating to COVID-19) as may be adopted by Client. Client may in its sole discretion revise such guidelines, protocols, and policies from time to time. Collaborator acknowledges that Client may require Collaborator to take certain actions as a result of city, county, or other government directives or guidelines, and that Client may implement, at its discretion, requirements that go beyond binding public health directives from the government.

## **2.3 Due Care and Legal Compliance**

Collaborator will fulfill its responsibilities with due care in accordance with this MOU, the Plan, and applicable law.

## **3. Use of Client Facilities**

### **3.1 Use**

Collaborator will use the Space only to carry out the Program. Upon reasonable notice, Client may limit access to or relocate the Space in order to accommodate Client events or for other needs.

### **3.2 Equipment and Supplies**

Client will not provide equipment, supplies, or other resources to Collaborator except as may be provided in the Plan. Collaborator may use Client's equipment or supplies only for the purposes stated in the Plan or as permitted by Client.

### **3.3 Facility Care; Non-Interference**

Collaborator will keep the Space and any equipment and supplies in good order and condition. Collaborator will not interfere with other operations of Client in the Facility.

### **3.4 No Alterations; Signage**

Collaborator may not make alterations to the Space without first obtaining written approval from Client. Collaborator may not post signage either on the exterior or the interior of the Facility without first obtaining approval of Client.

### **3.5 Client Staff; Instructions**

Client staff may be present during the dates and times Collaborator is using the Space. Collaborator will comply with any instructions or requests from Client staff, including instructions regarding activities and safety.

### **3.6 Walk-through**

Collaborator will complete a Facility walk-through as directed by Client.

### **3.7 Accidents and Emergencies**

Collaborator will report any accidents and emergency issues to the individuals specified in the Plan.

### **3.8 No Lease or Rights in Client Property**

Collaborator's right to use the Space is a revocable license only and does not constitute a grant of any ownership, leasehold, easement, or other property interest or estate in any Client property.

### **3.9 No Representations**

Client is not making any representations or warranties to Collaborator about the Facility or available resources, including the suitability of the Space or sufficiency of any resources provided by Client for Collaborator's activities. Collaborator accepts the Space on an "as-is" basis.

## **4. Branding and External Communication**

### **4.1 Name and Logo**

Client and Collaborator may not use the other's name, logo, or other marks (collectively, "Marks") on Program materials or for external communication purposes except as set out in the Plan.

### **4.2 Client Approval of Specific Use**

Any specific use by Collaborator of Client Marks (e.g., in a brochure or on a t-shirt) must be approved in advance by Client. As part of the approval process, Collaborator will provide to Client a draft or sample of any such proposed use.

### **4.3 Marks Ownership and Use**

Each of Client and Collaborator: (a) acknowledges that (i) it has no interest in the other party's Marks other than the limited rights, if any, granted under this MOU; (ii) the other party will remain the sole and exclusive owner of all right, title, and interest in its Marks; and (iii) any and all goodwill in the other party's Marks will inure solely to the benefit of the other party; (b) will use the other party's Marks only in the form provided by the other party, and will not combine the other's Marks with any other trademark, word, symbol, letter, design, or mark without the other party's prior written consent; (c) will comply with any reasonable trademark guidelines that the other party may provide; and (d) will promptly cease public use of the other party's Marks upon request by the other party.

### **4.4 Collaborator Photography and Video**

Collaborator will not film, record, photograph, interview, or otherwise document Program activities taking place at the Facility without prior written consent of Client and without obtaining necessary consents from individuals. If Collaborator obtains such consents, such video, photographic, audio, written, and other materials created by Collaborator and all copyrights in these materials will be the property of Collaborator, and may be used by Collaborator as it determines. Client will not be entitled to receive any payment from Collaborator for any such use.

### **4.5 Client Photography and Video**

Client may film, record, photograph, interview, or otherwise document Program activities taking place at the Facility. All such video, photographic, audio, written, and other materials created by Client and all copyrights in these materials will be the property of Client, and may be used by Client as it determines. Collaborator will not be entitled to receive any payment from Client for any such use.

### **4.6 External Communication**

For consistency of communication, except as contemplated by the Plan, neither Client nor Collaborator will issue any public statement relating to the Program without first consulting the other party.

## **5. Communication and Cooperation**

### **5.1 Coordinators**

Client and Collaborator will each identify a staff member to act as a lead and principal point of contact under this MOU and will authorize them to act on behalf of and commit the respective party. Each party may rely on decisions made by, and information and instructions provided by, the other party's lead. The initial leads are identified in the Plan. Each party may change its lead by written notice to the other party.

## **5.2 Meetings**

Client and Collaborator will meet periodically, as provided in the Plan or as otherwise agreed, to discuss Program planning, progress, execution, outcomes, and other matters.

## **5.3 Cooperation**

Client and Collaborator will cooperate with each other in connection with the Program, including: (a) carrying out their respective obligations on a timely basis; (b) keeping each other advised about potential issues; (c) promptly responding to email, text, and phone messages from one another; (d) working promptly and in good faith to resolve problems; and (e) providing one another with information, reports, and documents as may be appropriate in connection with Program activities.

## **5.4 Observation**

Client may, with reasonable notice, periodically observe Collaborator activities, Program participants, and Program staff at Client facilities. For clarity, nothing in this MOU will be construed to create an obligation on the part of Client to supervise any of the activities of Collaborator.

## **5.5 Organizational Developments**

Collaborator will notify Client promptly of: (a) any changes in its management team or key personnel responsible for carrying out its activities relating to the Program; (b) any loss of its tax-exempt status; or (c) any other development that could materially affect its ability to carry out the Program.

## **5.6 Participant Complaints**

Client and Collaborator will promptly notify the other of any concerns related to the Program raised by Program participants or family members.

## **6. Other Agreements**

### **6.1 Responsibility for Own Actions**

Client and Collaborator will each have sole responsibility for the planning, management, and implementation of its own activities relating to Program execution, including, without limitation, selecting and overseeing employees and volunteers. For clarity, Client and Collaborator will each be responsible for the actions of its employees and volunteers in accordance with law.

### **6.2 Confidentiality**

Client and Collaborator may share non-public information with one another, including, without limitation, information about Program participants or family members, financial or funding information, or other matters. Client and Collaborator will each use the other's confidential information only in connection with activities under this MOU and will keep this information confidential. These obligations do not apply to information that is subject to customary exceptions under a non-disclosure agreement, such as information generally available to the public, information already known by the receiving party before entering into this MOU, or information independently developed. All non-public information furnished under this MOU is and will remain the property of the furnishing party.

### **6.3 No Financial Support**

For clarity, and except as may be specifically provided in this MOU, Client has and will have no obligation to provide Collaborator with any discounted fees or charges, loans, advances, grants, expense reimbursement, waiver of fees or charges, or otherwise.

## **7. Insurance, Liability, and Indemnification**

### **7.1 Insurance**

Collaborator will carry or obtain the insurance, if any, specified in **Exhibit C**. Collaborator will furnish evidence of such coverage upon reasonable request of Client.

## **7.2 Damage**

Collaborator will be responsible for any damage or loss to the Space or Facility, or Client's equipment, furnishings, or other property beyond normal wear and tear, resulting from Program activities or Collaborator's actions or those of Collaborator's employees, contractors, volunteers, guests, or vendors ("Collaborator Parties") or Program participants. Collaborator will reimburse Client for any such damage or loss no later than 10 days after Client requests reimbursement.

## **7.3 Client Non-Responsibility**

Client will not be responsible for the loss, theft, or damage of Collaborator's equipment or belongings, or the equipment or belongings of any Collaborator Party, that may be stored or brought into the Facility by such persons. Collaborator and Collaborator Parties assume the risk of such loss.

## **7.4 Indemnification**

Collaborator will indemnify, defend, and hold harmless Client and Client's directors, officers, employees, agents, and assigns (collectively, "Indemnified Parties"), to the fullest extent under law, from and against all claims, liabilities, losses, damages, expenses, including, without limitation, claims in respect of death, personal injury, and property damage, and reasonable attorney's fees and expenses, arising from Collaborator's presence or activities at the Facility, including, without limitation, claims by any Collaborator Party, Program participant, other youth or family members of youth in the Facility, or any Client employee or visitor. Collaborator will not have any obligation to indemnify Client to the extent the liability is caused by Client's own gross negligence or willful misconduct.

## **7.5 Limitation of Liability**

Neither Client nor Collaborator will be liable to the other for any incidental, special, consequential, exemplary, punitive, or indirect damages arising out of or otherwise related to this MOU, even if the other party has been apprised of the likelihood of such damages.

## **7.6 Force Majeure**

Neither Client nor Collaborator will be liable to the other or to any other person for any failure or delay in the performance of its obligations under this MOU due to any cause beyond its reasonable control, including, without limitation, any act of God, fire, flood, earthquake, natural disaster, air quality, war, act of terrorism, civil disorder, strike or other labor dispute, governmental action, pandemic, epidemic, quarantine, recognized health threat as determined by a government authority or health agency, power failure or other interruption of public utilities, or curtailment of transportation systems (each, a "Force Majeure Event"). Should a Force Majeure Event occur, the affected party will give prompt written notice of such event to the other party, and will use reasonable efforts to work around the Force Majeure Event and resume performance as soon as reasonably possible, including, without limitation, a possible shift to digital delivery of the Program as feasible.

## **[7.7 Awareness and Assumption of Risks**

Collaborator understands that even if Client, Collaborator, and other persons present in the Facility follow all health and safety protocols, Collaborator and Program participants still may be exposed to COVID-19 or other infectious diseases as a result of Collaborator's and Program participants' presence and activities in the Facility. Risks may also arise from Collaborator's own actions or the actions of others, including, without limitation, Program participants or others in or near the Facility. With this awareness, Collaborator (a) is knowingly choosing in its own discretion to use the Space and resources Client makes available to Collaborator, and (b) knowingly assumes the risks of injury, illness, exposure to disease, death, property damage or loss, financial obligation, loss of privacy, loss of reputation, and all other injuries and other consequences, whether known or unknown, whether foreseen or unforeseeable, that may result, directly or indirectly, from Collaborator's presence and activities at the Facility.

### **7.8 Waiver of Liability**

To the extent permitted by law, Collaborator waives and releases any and all claims against Client and all other Indemnified Parties, under tort, contract, equity, or any other theory, for any liability, loss, damage, expenses, and attorney's fees arising from Collaborator's presence or activities at the Facility regardless of the cause (including from the health threats of COVID-19 or other infectious diseases). Collaborator will not sue Client or any other Indemnified Party on the basis of these waived and released claims.]

## **8. Termination**

### **8.1 Termination on Notice**

Either Client or Collaborator may, on its own, terminate the Program at any time by providing written notice of that decision to the other. Such termination will be effective 30 days after receipt of notice by the non-terminating party.

### **8.2 Suspension by Client**

Client may in its discretion suspend Facility access if Collaborator fails to make timely payment of fees. Such a suspension will be effective upon Client's delivery to Collaborator of a written notice to that effect. If the problem is not addressed to Client's satisfaction within a reasonable time, Client may terminate the MOU under Section 8.3.

### **8.3 Termination for Breach**

If either party breaches any of its obligations under this MOU, the non-breaching party may provide the breaching party with written notice of the breach. If the breaching party fails to cure the breach within 15 days after receipt of such notice, the non-breaching party may terminate this MOU upon delivery to the breaching party of a written notice to that effect, with the termination effective upon receipt of such notice by the breaching party. The non-breaching party may, in its reasonable discretion, determine whether the breach has been cured. For clarity, late or missed payments by Collaborator to Client will be considered a breach under this MOU.

### **8.4 Termination for Conduct**

Client may immediately terminate this MOU by giving written notice to Collaborator if Collaborator has engaged or is alleged to have engaged in conduct in violation of Sections 2.1, 2.2, 4.1, 4.2, or 4.3. Such termination will be effective upon delivery of the notice by Client.

### **8.5 Termination for Reputational Harm**

Client or Collaborator may immediately terminate this MOU by giving written notice to the other party if, based on information about the other party not known to the terminating party at the time this MOU is signed, the terminating party concludes that a continued association with the other party is inconsistent with its values or could otherwise adversely affect its reputation. Such termination will be effective upon delivery of the notice by the terminating party.

### **8.6 Effect of Termination**

Upon the end of the Term or termination of this MOU, Client and Collaborator will promptly cease any use of the other's Marks and materials, if applicable. If the MOU terminates under this Section 8, Client and Collaborator will cooperate in transition activities and will use reasonable efforts to minimize interruption and any adverse impacts of the termination, including impacts on Program participants. Upon termination of this MOU, Collaborator will, at its expense, leave the Facility in good order and condition, reasonable wear and tear excepted, and will remove all of Collaborator's and Collaborator Parties' personal property. Collaborator will not be entitled to any refund of amounts previously paid, and, if fees are not already fully paid, will pay Client fees through the effective date of termination. Client will invoice Collaborator for such fees. Collaborator will pay the invoiced amount no later than 30 days after delivery of such invoice. Sections 4.3, 6.2, 7.4, 7.5, 7.6,[ 7.7, 7.8,] 8.6, and 9 will survive the expiration or termination of this MOU.

### **8.7 Personal Property**

Client may store, at Collaborator's risk and expense, any personal property that Collaborator, a Collaborator Party, or a Program participant leaves behind at the Facility after termination of the MOU. Client will release the property when and only when Collaborator has fulfilled all remaining obligations under the MOU and paid the reasonable storage charges. Client may sell Collaborator's property and apply proceeds in accordance with applicable law.

## **9. General Provisions**

### **9.1 Entire Agreement**

This MOU, taken together with the Plan and other exhibits, expresses Client's and Collaborator's final, complete, and exclusive agreement, and supersedes any and all prior or contemporaneous written and oral agreements, negotiations, communications, courses of dealing, or understandings between Client and Collaborator relating to its subject matter. If there are any conflicts between the Plan and this MOU, then this MOU will control.

### **9.2 Amendment**

This MOU may be amended only as stated and by a writing signed by both Client and Collaborator which recites that it is an amendment to this MOU.

### **9.3 Severability**

If any provision of this MOU is held illegal, invalid, or unenforceable, all other provisions of this MOU will nevertheless be effective, and the illegal, invalid, or unenforceable provision will be considered modified such that it is valid to the maximum extent permitted by law.

### **9.4 Independence**

Client and Collaborator are and will remain independent contracting parties. The arrangements contemplated by this MOU do not create a partnership, joint venture, employment, fiduciary, or similar relationship for any purpose. Neither Client nor Collaborator has the power or authority to bind or obligate the other to a third party or commitment in any manner. Any use of the term "partner," "affiliate," or comparable term in any communication is solely for convenience.

### **9.5 Waiver**

Any waiver of the provisions of this MOU must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this MOU will not be considered a waiver of any later breach or of the right to enforce any provision of this MOU.

### **9.6 Assignment**

Collaborator may not, directly or indirectly, assign its rights or delegate its duties under this MOU to anyone else without the prior written consent of Client, except in connection with a merger, acquisition, reorganization, sale, or transfer of substantially all of its assets, or other operation of law.

### **9.7 No Third-Party Beneficiaries**

Except as provided in Section[s] 7.4[ and 7.8], this MOU is for the exclusive benefit of Client and Collaborator, and not for the benefit of any third party including, without limitation, any Program participant or family member, or any Client or Collaborator employee, affiliate, subcontractor, or vendor.

### **9.8 Governing Law; Jurisdiction**

This MOU is governed by California law. Client and Collaborator consent to the exclusive jurisdiction of the state and federal courts for \_\_\_\_\_, California.

### **9.9 Counterparts**

This MOU may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

**9.10 Electronic Signature**

Client and Collaborator agree that this MOU may be electronically signed and that the electronic signatures appearing on such documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

\* \* \* \* \*

Client and Collaborator signed this MOU as of the date set out in its first paragraph.

**Client**

**[Collaborator name]**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

# Exhibit A Program Plan

## Program Purpose and Description

Purpose	
Description	

## Program Specifics

[Program(s)]	
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## Space

Client facility address ("Facility")	
Rooms or other locations ("Space")	
Areas specifically excluded from use	
Additional equipment, supplies, and resources	
Client contact for accidents or emergencies	

## Program Operation

Days of the week	
Hours	
Additional time (set-up, clean-up)	

## Key Dates

Program Start Date	
Key Event Dates	

<b>Training and Orientation</b>	
<b>Program Renewal Meeting</b>	
<b>Program End Date</b>	

**Financial Terms**

<b>Fees</b>	
<b>Payment Timing</b>	
<b>Other Commitments</b>	

**Staffing**

<b>Client</b>	
<b>Collaborator</b>	
<b>Background Checks; Screening Protocols</b>	

**Materials**

<b>For Participants</b>	[e.g., liability waivers, t-shirts, evaluation forms.]
<b>[Other category]</b>	

**Memberships and Youth Data**

<b>Memberships</b>	
<b>Membership Fee Per Youth</b>	
<b>Youth Data</b>	

**Safety Protocols**

<b>Safety protocols</b>	
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**Communications**

<b>Planning Meetings</b>	
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<b>Check-In Meetings</b>	
<b>Reports</b>	
<b>Program Evaluations or Surveys</b>	

**Coordinators**

<b>Client</b>	[Name] [Title] [Address] [Phone] [Email]
<b>Collaborator</b>	[Name] [Title] [Address] [Phone] [Email]

**Exhibit B**  
**Program Plan Adjustment**

<b>Date of adjustment</b>	
<b>Reason for change(s)</b>	
<b>[Modified Objectives]</b>	
<b>[Modified Activities]</b>	
<b>[Modified Responsibilities]</b>	
<b>[Other Terms]</b>	

This document is a Program Plan Adjustment and is an amendment to the Memorandum of Understanding, dated \_\_\_\_\_, 20\_\_, between Client and [Name of Collaborator].

Agreed and confirmed as of the date stated above.

**Client**

**[Name of Collaborator]**

By: \_\_\_\_\_ By: \_\_\_\_\_

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

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

**Exhibit C**  
**Insurance Requirements**

*[insert requirements]*