

Services Agreement

This is a Services Agreement (“Agreement”) dated as of _____, 20____ between [____], a California nonprofit corporation (“Client”), and _____, a _____ (“ABC”).

Background

Client is a national nonprofit organization dedicated to [____]. Client works with schools and districts to [____]. The proprietary methodologies and materials used and shared by Client in working with its clients reflect years of research and development. ABC wishes to obtain services and materials from Client on the basis set out in this Agreement.

1. Services

1.1 Scope

Client will perform services (“Services”) for ABC as set out in, and program elements are described in, the Scope of Work (“SOW”) attached as **Exhibit A**.

1.2 Timeframe

Client will perform the Services, and the Agreement will be effective, during the period stated in the SOW.

1.3 Compensation

Payment for the Services and reimbursements for Client expenses will be due as set forth in the SOW.

1.4 Materials

In performing Services, Client may provide ABC with methodologies, protocols, forms, training modules, resource and instructional guides, videos, visual interfaces, information, graphics, designs, compilations, software, reports, documents, booklets, and other materials (collectively, “Materials”). Client provides Materials solely for use by ABC in connection with development and implementation of induction and other programs in conjunction with Client. Client may in its discretion make Materials available in various ways, including, without limitation, through providing hard copies, presenting Materials at training or consultation sessions, enabling ABC to download Materials from Client websites, and providing ABC with access to interactive websites. Client provides Materials on the license and other terms set out in Section 4 of this Agreement.

1.5 Scope Changes

If ABC requests services from Client outside the parameters set forth in the MOU, or if ABC and Client otherwise wish to modify the activities contemplated by the SOW, Client will submit to ABC a written Change Order, in the form of **Exhibit B**, describing the additional or modified Services to be performed and the additional fees, if any, associated with such Services. ABC will decide whether or not to approve the additional Services. Client will not perform any Service not authorized by ABC in the SOW or approved Change Order.

2. Relationship

2.1 Independent Entities

Client is an independent contractor and is solely responsible for performing the Services. The arrangements contemplated by this Agreement do not create a partnership, joint venture, employment, fiduciary, or similar relationship for any purpose. Neither ABC nor Client have the power or authority to bind or obligate the other to a third party or commitment in any manner. Client and ABC will each have sole responsibility for its own employees and for the planning, management, and implementation of its own activities relating to the Services. For clarity, ABC

employees who are identified, released from teaching, trained, and function as mentors and co-presenters will remain employees of ABC.

2.2 External Communication

Client may, subject to Sections 2.2 and 3.1 of this Agreement, identify ABC as a client in internal and external communications, including on Client's website and in Client's outreach materials.

2.3 Client Relationships with Other ABCs

ABC acknowledges that Client provides [_____] services in other locations throughout the country, that such services are similar to the services Client will provide under this Agreement, and that such services Client provides elsewhere may result in preparation of materials that are similar to the Materials.

3. Confidential Information

3.1 Non-Disclosure

Neither Client nor ABC will disclose to any third party any confidential or proprietary information, including, without limitation, employee and student data, budget and other financial data, product plans and strategies, technical data and research, know-how, and other information which the disclosing party considers to be confidential ("Confidential Information"), for any purpose other than performance of the Services, without first having obtained the prior written consent of the other party. For clarity, ABC's name and general information about the scope of Services are not considered Confidential Information.

3.2 Exceptions

Notwithstanding the provisions of Section 3.1, Confidential Information will not include information: (i) already known to the receiving party (without improper conduct or breach of an obligation) prior to disclosure to the receiving party by the disclosing party, as established by documentary evidence; (ii) entered into the public domain through no breach of this Agreement or other wrongful act of the receiving party; (iii) rightfully received by the receiving party from a third party without breach of any obligation of confidentiality of such third party to the owner of the Confidential Information; (iv) approved for release by written authorization of the owner of the Confidential Information; or (v) independently developed by a party without access to the Confidential Information of the other party.

4. Materials and Marks

4.1 License Grant for Program Use

Client grants to ABC a limited, non-transferable, non-exclusive license to use, copy and distribute Materials, as set out in the SOW, solely for use by ABC in connection with internal [_____] activities during the term of this Agreement. For clarity, ABC will not (i) independently present the Materials in a module, academy, workshop or similar training environment without Client's prior written consent or otherwise provided Material to any third party; (ii) use the Materials for commercial purposes or make any derivative works of or otherwise modify the Materials except as permitted under the SOW; [or (iii) act in respect of Materials in a manner inconsistent with any use terms set out in the SOW or in the terms of use for websites through which Client may make Materials available. If Client reasonably objects to any proposed or actual use of Materials by ABC, ABC will terminate such use within ten (10) days after receipt of written notice from Client. Other than as expressly set forth in this Agreement, Client is not granting any license or other rights in such intellectual property to ABC, and all such rights are expressly reserved by Client.

4.2 Trademarks

Materials may bear Client's trademarks, trade names, logos and other proprietary notices (the "Client Marks"). Client grants to ABC a limited, non-exclusive, non-transferable license, with no right to sublicense, to display the Client Marks on ABC's websites and on internal materials relating to Client services. ABC will comply with trademark usage guidelines as may be included

in the SOW or separately provided by Client to ABC. Any goodwill generated through use of the Client Marks is owned by and will inure to the benefit of Client.

4.3 Ownership of Materials and Client Marks

Client retains and will own all right, title and interest in and to all Materials and Client Marks. ABC acknowledges that the Services and Materials provided under this Agreement are proprietary to Client and that no Materials will be deemed a work for hire. If at any time ABC acquires any rights, title or interest in the intellectual property rights relating to the Materials or Client Marks, ABC (i) irrevocably assigns to Client all rights, title, and interest worldwide in such intellectual property rights; (ii) grants to Client an irrevocable, exclusive, royalty-free, perpetual, and worldwide license to any rights in intellectual property that cannot be assigned to Client, and (iii) waives enforcement against Client of any rights in the intellectual property that cannot be assigned or licensed to Client. ABC will execute such documents, render such assistance, and take such other action as Client may reasonably request, at Client's expense, to apply for, register, perfect, confirm and protect Client's rights to all intellectual property rights relating to the Materials and Client Marks.

4.4 Copyright and other Legal Rights

ABC acknowledges that all Materials, regardless of form (i.e., whether video, paper, electronic or otherwise), and whether tangible or intangible, whether previously created by Client or created or produced for the first time by Client in the performance of its obligations under this Agreement, and all Client Marks, are protected by laws relating to intellectual property. Such law include, without limitation, United States and state copyright, trade dress, patent, and trademark laws, international conventions, and other applicable laws. ABC will not obscure or remove any copyright, trademark or other proprietary-rights notices on or from Materials, and will reproduce all such notices on any authorized copies of Materials.

5. Insurance and Indemnification

5.1 Insurance

Client will maintain insurance as follows: Commercial General Liability (\$1,000,000 per occurrence; \$2,000,000 limit in the aggregate); Commercial Automobile Liability (\$1,000,000 combined single limit per accident); and Worker's Compensation (coverage as required in employee's state of employment).

5.2 Indemnification of ABC

Client will defend, indemnify and hold ABC and ABC's directors, officers, employees, agents, and assigns (collectively, "ABC Parties") harmless against all claims, liabilities, losses, damages, and expenses, including reasonable attorney's fees and expenses, resulting from (i) Client's performance of activities under or breach of this Agreement; (ii) Client's negligence or willful misconduct; or (iii) any claims against ABC by Client employees or subcontractors. Client will have no obligation to indemnify ABC to the extent the liability is caused by ABC's gross negligence or willful misconduct.

5.3 Indemnification of Client

ABC will defend, indemnify, and hold Client and Client's directors, officers, employees, agents, and assigns (collectively, "Client Parties") harmless against all third party claims, liabilities, losses, damages, and expenses, including reasonable attorney's fees and expenses, resulting from (i) ABC's performance of activities under or breach of this Agreement; (ii) ABC's negligence or willful misconduct; [or (iii) any claims against Client by ABC employees, subcontractors, students, or parents. ABC will have no obligation to indemnify Client to the extent the liability is caused by Client's gross negligence or willful misconduct.

6. Disclosures, No Warranties, and Limitation of Liability

6.1 No Warranties

The Materials and Services are provided to client on an “as is” basis. Neither party makes any representations or warranties of any kind, whether oral or written, whether express, implied, or arising by statute, custom, course of dealing or trade usage, with respect to Materials, Services, or any other items provided under or matters contemplated by this Agreement. Each of Client and ABC expressly disclaim any and all implied warranties, including any warranties of fitness for a particular purpose, title, non-infringement and merchantability.

6.2 Limitation of Liability

Under no circumstances, and under no legal theory, whether in tort, contract, or otherwise will Client or its affiliates, contractors, employees, agents, or third party partners or suppliers, be liable for any special indirect, incidental, consequential, punitive or exemplary damages (including without limitation, loss of goodwill, or cost of cover) arising out of or relating to this Agreement, even if Client or Client’s authorized representative has been advised of the possibility of such damages. In no event will the total aggregate liability of Client to any person arising out of or relating to this agreement exceed the total amounts paid to Client under this Agreement in the twelve (12) months prior to the event or circumstances giving rise to such liability.

7. Term and Termination

7.1 Expiration

This Agreement will terminate at the end of the time period set out in the SOW.

7.2 Mutual Agreement

This Agreement may be terminated by a writing signed by both Client and ABC that states their intent to terminate this Agreement and the date upon which such termination will take effect.

7.3 Termination on Notice

Either Client or ABC may on its own terminate this Agreement by providing written notice of that decision to the other. Such a termination will be effective forty-five (45) days after delivery of the notice by the terminating organization. If ABC terminates the Agreement under this Section 7.3, ABC will pay Client for work then in progress as invoiced by Client, and any previous work completed by Client prior to the termination date for which payment is still outstanding. ABC will pay such amounts within 30 days of receipt of invoice from Client.

7.4 Termination for Breach

If either party breaches any of its obligations under this Agreement, 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 fifteen (15) days after receipt of such notice, the non-breaching party may terminate this Agreement upon delivery to the breaching party of a written notice to that effect, with the termination effective upon delivery of such notice to the breaching party. The non-breaching party may in its reasonable discretion determine whether the breach has been cured.

7.5 Immediate Termination

Notwithstanding anything in this Agreement to the contrary, either Client or ABC may immediately terminate this Agreement by giving written notice to the non-terminating party if the non-terminating party commences any proceeding under any bankruptcy or insolvency law, dissolves, liquidates, or ceases to engage in its operations. Such a termination will be effective upon receipt of notice by the non-terminating party.

8. General Provisions

8.1 Entire Agreement; Amendment

This Agreement, together with the SOW and any Change Orders, represents the final and exclusive agreement between ABC and Client regarding Client's provision of Services to ABC. This Agreement may be changed only as described in a written document signed by ABC and Client which refers specifically to this Agreement and says that it is changing this Agreement. Any modifications to the SOW must be made through a Change Order signed by ABC and Client. It is understood that delivery of Services may require ABC to access websites maintained by Client; use of such websites is subject to the terms of use for such sites, which set out obligations in addition to those contained in this Agreement.

8.2 Severability; Waiver

If any provision of this Agreement is held illegal, invalid, or unenforceable, all other provisions of this Agreement 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. Any waiver of the provisions of this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

8.3 Compliance with Law

In engaging in the working relationship contemplated by this Agreement, each of Client and ABC will comply with applicable laws including, without limitation, laws relating to student data collection, security, use, disclosure, and privacy.

8.4 Assignment

Client may not assign its rights or obligations under this Agreement to anyone else without the prior written consent of ABC, except that Client may assign all of its rights and obligations under this Agreement without ABC's prior written consent in connection with a merger, acquisition, reorganization, sale or transfer of substantially all of its assets, or other operation of law.

8.5 Third Party Beneficiaries

Except as specifically provided in Sections 5.2 and 5.3, this Agreement is for the exclusive benefit of ABC and Client, and not for the benefit of any third party including, without limitation, any employee, affiliate, or vendor of ABC or Client.

8.6 Notices

Notices, approvals, and consents under this Agreement must be in writing and delivered to Client and ABC by mail, courier, fax, or email to the lead contact persons identified in the SOW.

8.7 Force Majeure

Neither party will be required to perform or be held liable for failure to perform if, beyond the control of either party, nonperformance is caused by destruction, material damage, or other unavailability of facilities at training sites; strikes or other labor disputes; national emergency, acts of God, the elements, power failures, computer system hacking, or software or hardware failures; or any other causes beyond the control of the party unable to perform. The non-performing party will notify the other of such problems and will use reasonable efforts to address the problem and carry out its obligations.

8.8 Governing Law

This Agreement is governed by California law. Client and ABC consent to the exclusive jurisdiction of the state and federal courts for [_____], California.

8.9 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.

Client

[ABC]

Name: _____

Name: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Scope of Work

Exhibit A

Form of Change Order

Original SOW date	
Reason for change in Services	
Modified Services (if applicable)	
Modified timeframe (if applicable)	
Modified compensation terms (if applicable)	

This document is a Change Order, dated _____, 20__, between Client and [ABC].

Agreed and confirmed as of the date stated above in this Change Order:

Client

[ABC]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____