

Service Agreement

This is a Service Agreement (“Agreement”) dated as of _____, 20__ (“Effective Date”) between [_____] (“Client”), a California nonprofit corporation, and _____, a _____ (“Partner”).

Background

- A. Client’s mission is to [_____]. Through a technology platform and [_____] service, Client acts as a data and service bridge between [_____] to help [_____].
- B. Client provides a web-based software tool called [_____] (the “Service”), which [_____].
- C. Client also provides a mobile app called [_____] that [_____].
- D. Client also offers optional [_____] services (“[Other] Services”) to provide [_____].
- E. Partner is a [_____]. Partner wishes to subscribe to the Service. This Agreement sets out the basis on which Partner may access and use the Service, and, if purchased, obtain [Other] Services for its students.

1. Core Terms

1.1 Access to Service

Client will give Partner access to the Service on the terms and conditions contained in this Agreement, including those set out in **Exhibit A** (“Subscription Schedule”). Partner may use the Service solely to [_____].

1.2 Term

The term of this Agreement will be twelve months from the Effective Date (“Term”), unless terminated earlier under Section 9. Prior to the expiration of the Term, Client may in its sole discretion send Partner a written proposal to renew its subscription to the Service.

1.3 Fees

Partner will pay fees to Client as set out in the Subscription Schedule (“Subscription Fees”). Partner will pay Subscription Fees within 30 days after the Effective Date. Partner is responsible for all taxes arising from payment of Subscription Fees.

1.4 Expenses

Partner will reimburse Client for expenses as set out in the Subscription Schedule.

1.5 Training

Client will provide training services to Partner as set out in the Subscription Schedule.

1.6 [Other] Services

On or after the Effective Date, Partner may elect to purchase optional [Other] Services for [_____]. The terms, fees, and schedule for any such services are set out in the [Other] Services Addendum attached as **Exhibit C**. Client will begin providing [Other] Services after Client and Partner sign, or as otherwise specified in, the [Other] Services Addendum.

1.7 Additional Services

If Partner desires to purchase additional software modules or customizations for the Service or to engage Client for additional development work, Partner and Client will enter into a separate agreement specifying the additional work, terms, and fees.

2. Use of Service

2.1 Users

Partner will limit access to the Service to the number of personnel specified in the Subscription Schedule specifically authorized and designated by Partner to use the Service (each a “User”). Partner will provide Client with the name, title, and contact information of each User. Partner will designate as Users only personnel who require access to [_____] to perform their job duties.

2.2 User Account Log-ins

Each User may set up an account with a unique username and password (collectively “Log-in”). Partner will ensure that each Log-in is used only by the User to whom it was assigned, and will not be shared with or used by any other person. A User may not use his or her Log-In to access the Service in multiple concurrent login sessions. A Log-in may be reassigned to a new User who is replacing a former User who has terminated employment or otherwise changed job function.

2.3 User Account Security

Partner is solely responsible for all access to and use of the Service by its Users, for maintaining the confidentiality of all of its Users’ Log-ins, and for all activities that occur under these Log-ins. Partner will not permit any third party to use Partner’s Log-ins at any time and will notify Client promptly of any actual or suspected unauthorized use of its Log-ins.

2.4 Partner Content Backup

Partner and other subscribers to the Service may input or upload content to the Service (“Partner Content”), including without limitation [_____]. Partner will be responsible for keeping and maintaining backup copies of Partner Content at its sole cost and expense. Partner understands that Client is not obligated to backup any Partner Content.

2.5 Service Availability

Client will use commercially reasonable efforts to maintain continuous availability of the Service. Client may temporarily suspend operation of the Service for system maintenance. Client will use commercially reasonable efforts to schedule any planned downtime at a time Client determines will have the least impact on Partner and to notify Partner in advance.

2.6 Software Updates

Client may in its sole discretion provide Partner with updates or other improvements to the Service.

2.7 Maintenance and Support

Client will use commercially reasonable efforts to provide Partner maintenance and support via e-mail for troubleshooting usage and hosting issues in connection with the Service, Monday through Friday, 9:00 AM to 5:00 PM Pacific Time, excluding U.S. bank holidays. Client has no obligation to provide any further maintenance and support services to Partner in connection with the Service.

2.8 Revocation of Service

Client may suspend or deny access to the Service to any User for any actions in material violation of any provision of this Agreement, including those set out in Section 7, and to terminate any Log-in that Client reasonably determines may have been used by an unauthorized third party. Client will promptly notify Partner if it takes any such action.

3. Student Records and Confidentiality

3.1 Student Records

“Student Records” means any datum or file containing a student’s [_____].

3.2 Sharing Student Records

Partner may share Student Records with Client, or request that Client retrieve Student Records from National Student Clearinghouse (“NSC”) on its behalf. Partner expressly consents to Client’s disclosure of Student Records to [_____] (“Affiliates”).

3.3 Data Security

Client will use commercially reasonable efforts to secure Student Records stored on its servers by limiting physical access, encrypting data, monitoring access to servers through the Service, performing regular backups, and other means.

3.4 Privacy Policy

Partner understands and agrees to the terms of Client's privacy policy available on its website ("Privacy Policy"). The Privacy Policy applies to all persons who access Client website content, including the Service. Client may in its sole discretion update the Privacy Policy at any time, and will notify Partner by email prior to any such updates.

3.5 Compliance with Privacy Laws and FERPA

If applicable, Partner will comply with applicable federal and state laws and regulations, including without limitation the Family Educational Rights and Privacy Act ("FERPA"). Partner is solely responsible for its compliance with FERPA and other applicable laws. Partner agrees that if Partner makes Student Records available to Client, Client will be acting as Partner's contractor, consultant, or other party to whom Partner has outsourced an institutional service or function. If Partner is required under FERPA to transfer any obligations regarding Student Records to Client, Partner will provide written notice to Client prior to the Effective Date. Partner represents and warrants that it has obtained the appropriate consents of applicable students as required under FERPA to disclose and license Student Records to Client under this Agreement.

3.6 [_____] [_____]

3.7 Confidentiality

Client and Partner may share non-public information ("Confidential Information") with one another, including Student Records, [Other] Service Content (as defined in **Exhibit C**), and information about financial, funding, programmatic, and other matters. Each party will use the Confidential Information of the other party only in connection with activities under this Agreement and will keep this information confidential. Confidential Information does not include information generally available to the public, information already known to the receiving party before entering into this Agreement, or information independently developed. All Confidential Information furnished under this Agreement is and will remain the property of the furnishing party.

3.8 De-identified Records

Partner expressly consents to Client: (a) creating de-identified records based on Partner Content, including Student Records, that contain no personally identifiable information ("De-identified Records"); (b) retaining De-identified Records after the expiration of termination of this Agreement; (c) using De-identified Records internally and disclosing De-identified Records to external researchers to conduct studies and publish reports, articles, or other materials.

3.9 Retaining Other Records

Partner expressly consents to Client retaining each of its students' [_____] in order for Client to report on long-term student outcomes ("Retained Records"). Client will limit access to Retained Records to Client senior staff and will use Retained Records only to [_____].

3.10 Publicity

Client may identify Partner as a partner or customer and use Partner's name and logo in internal and external communications, including on its website and outreach materials. Neither Client nor Partner will issue any press release or other public statement (including statements on its website) relating to this Agreement without first obtaining the other's prior written consent.

4. Licenses from Client

4.1 Service and Service Content

Client grants Partner a nonexclusive, non-transferable, non-sublicensable license to access and use the Service and view, download, and reproduce Service Content, solely for Partner's internal purposes. "Service Content" means all content provided by Client through the Service (excluding Partner Content) and the design, layout, and look and feel of the Service.

4.2 Student Records

Client grants Partner a nonexclusive, non-transferable, non-sublicensable license to view, download, reproduce, and modify Student Records provided by Client through the Service, solely for the purposes of (a) [_____], and (b) improving and conducting studies for Partner's educational program.

5. Licenses from Partner

5.1 Partner Content

Partner grants Client a nonexclusive license to use, reproduce, modify, distribute, and display Partner Content, solely for the purposes of providing and improving the Service and any [Other] Services. Subject to applicable laws, Client may sublicense these rights to Affiliates or Partner's service providers.

5.2 Student Records

Partner grants to Client a nonexclusive license to view, download, reproduce, and modify any Student Records provided by Partner, solely for the purposes of: (a) providing the Service and providing students with [Other] Services, if applicable; and (b) improving and conducting studies for Client or other nonprofit or governmental organizations. Subject to applicable laws, Client may sublicense these rights to Partner's service providers.

5.3 Funder Requirements

Client may enter into grant or other funding agreements that require it to share or license Partner Content to funders. Client will advise Partner about any such requirements, and, to the extent necessary to comply with such requirements, and subject to Sections 5.1 and 5.2, Partner will grant Client royalty-free licenses to provide Partner Content to such funders.

6. Ownership

6.1 Service and Service Content

Client retains all rights, title, and interest in and to the Service, Service Content, any [Other] Service Content (as defined in the [Other] Services Addendum), and all related trade secrets, copyrights, trademarks, patents and other intellectual property rights recognized by the laws of any country. Client does not grant Partner any rights, title, or interest in or to the Service other than the use rights set out in this Agreement.

6.2 Feedback and Suggestions

Client welcomes Partner feedback and suggestions for improving the Service. Client will treat any such feedback or suggestions as non-confidential and non-proprietary, and may use such information in any manner in its discretion without any obligation to compensate Partner.

7. Restrictions

7.1 Service Restrictions

Partner will not: (a) provide any party access to or use of the Service other than the Users authorized under this Agreement; (b) use the Service to send junk or spam e-mails, market any goods or services to students, or transmit material in violation of any applicable laws; (c) modify, reverse engineer, adapt, or otherwise tamper with the Service; (d) modify another website to falsely imply that it is associated with the Service or Client; (e) introduce software, automated agents, or

scripts to the Service in order to produce multiple accounts, generate automated searches, or mine data; or (f) obscure any part of the Service by HTML/CSS, scripting, or any other means.

7.2 Content Restrictions

Partner is solely responsible for Partner Content and the consequences of sharing such content through the Service with Client and Affiliates. Partner will ensure that Partner Content: (a) does not infringe any copyright or intellectual property rights; (b) is not unlawful, deceptive, offensive, threatening, libelous, defamatory, pornographic, obscene or in violation of this Agreement; (c) does not contain viruses or other malicious computer programming codes; (d) is not obtained without all required consents; and (e) does not otherwise violate the rights of a third party.

7.3 Enforcement

Client may in its sole discretion remove or modify Partner Content, suspend or terminate any User's access, terminate this Agreement, or report Partner to law enforcement authorities if Client has reason to believe Partner or any User has violated this Agreement or the Privacy Policy, or has harmed or threatened the Service or any students.

8. Warranties, Indemnification, and Liability

8.1 Warranty Disclaimer

Client provides all Service, Service Content, and any [Other] Services on an AS IS basis, and makes no representation or warranty of any kind, express or implied, relating to the Services, Service Content, and any [Other] Services, including without limitation implied warranties of merchantability, fitness for a particular purpose, or non-infringement of intellectual property rights. Client makes no representation or warranty that the Service will operate without interruption, meet any performance or reliability standards, be error-free, or that data stored through the Service will remain secure or undamaged.

8.2 Indemnification by Client

Client will defend, indemnify, and hold Partner and Partner's directors, officers, employees, agents, and assigns harmless against all third-party claims, liabilities, losses, damages, and expenses, including reasonable attorney's fees and expenses, resulting from Client's: (a) infringement of any U.S. copyrights or misappropriation of any trade secrets recognized under the Uniform Trade Secret Act; (b) material breach of this Agreement; or (c) improper disclosure, modification, or use of Student Records. Client will have no obligation to indemnify Partner to the extent that liability is caused by Partner's gross negligence or willful misconduct. If the Service becomes, or is likely to become, the subject of an infringement claim, Client may in its sole discretion: (i) procure for Partner the right to continue using the Service; (ii) modify the Service so that it is non-infringing; (iii) replace the Service with non-infringing technology which does not materially impair Service functionality; or (iv) terminate this Agreement and refund any fees paid by Partner for the remainder of the then-current term. Notwithstanding the other provisions of this Section 8.2, Client will have no obligation with respect to any infringement claim based on: (A) any use of the Service by Partner or its Users in violation of this Agreement; (B) conformance to Partner's specifications; (C) use of the Service in combination with outside products, equipment, or data not provided by Client; or (D) any modification of the Service by anyone other than Client. This Section 8.2 states Partner's sole remedy and the entire liability of Client's directors, officers, employees, agents, and assigns for infringement claims and actions.

8.3 Indemnification by Partner

Partner will defend, indemnify, and hold Client and Client's directors, officers, employees, agents, and assigns harmless against all third-party claims, liabilities, losses, damages, and expenses, including reasonable attorney's fees and expenses, resulting from Partner's: (a) material breach of this Agreement; (b) improper disclosure, modification, or use of Student Records; or (c) Partner's interaction with students. Partner will have no obligation to indemnify Client to the extent that liability is caused by Client's gross negligence or willful misconduct.

8.4 Limitation of Liability

Under no circumstances, and under no legal theory, whether in tort, contract, or otherwise will either Client or Partner or their respective directors, officers, employees, agents, and assigns, be liable for any special, indirect, incidental, consequential, punitive, or exemplary damages arising out of or relating to this Agreement, including without limitation problems caused by failed Internet connections or other hardware, software or other equipment not owned or operated by Client or misuse, abuse, negligence, or improper or unauthorized use of the Service, even if Client, Partner, or their respective authorized representatives have been advised of the possibility of such damages. Client's total liability in connection with this Agreement, including any indemnification obligations under Section 8.2, will not exceed the total fees that Partner has paid or will pay to Client in the twelve (12) months preceding the claim, except that no such limitation will apply in respect of liabilities involving the gross negligence or willful misconduct of Client.

9. Termination

9.1 Termination on Notice

Either Client or Partner may terminate this Agreement at any time by providing written notice of that decision to the other. Such a termination will be effective 30 days after receipt of notice by the non-terminating party.

9.2 Effect of Termination

Upon termination or expiration of this Agreement: (a) all licenses granted to Partner by Client will terminate; (b) User accounts will be disabled; (c) Partner will promptly discontinue use of the Service. Following termination, upon written request, Client or Partner will promptly return all of Confidential Information in its possession and permanently erase all electronic copies of such information. Sections 3.1 – 3.9, 5.1, 5.2, 6.1, 6.2, 7.3, 8.1 – 8.4, 9.2, and 10.1 – 10.12 will survive termination or expiration of this Agreement.

9.3 Refund

If Client terminates this Agreement under Section 9.1, Client will refund within 30 days any amounts Partner already paid for the current term for the Service and any [Other] Services, if applicable, prorated for the remaining time in the term.

10. General Provisions

10.1 Entire Agreement

This Agreement, together with the Subscription Schedule, Privacy Policy, and [Other] Services Addendum, if applicable, expresses Client and Partner's final, complete, and exclusive agreement, and supersedes any and all prior or contemporaneous written and oral agreements, arrangements, negotiations, communications, course or dealing or understanding between Client and Partner relating to its subject matter. If there are any inconsistencies between this Agreement and the Subscription Service Agreement, Privacy Policy, or [Other] Services Addendum, if applicable, this Agreement will control.

10.2 Amendment

This Agreement may be amended only as stated in a written document signed by both Client and Partner that states that it is an amendment to this Agreement.

10.3 Severability

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.

10.4 Waiver

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.

10.5 Assignment

Partner may not assign its rights or obligations under this Agreement 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.

10.6 No Third-Party Beneficiaries

Except as provided in Sections 8.2 and 8.3, this Agreement is for the exclusive benefit of Client and Partner and not for the benefit of any third party including without limitation, any User, student, employee, associate, or vendor of Client or Partner.

10.7 Independence

Client and Partner are and will remain independent contracting parties. The arrangements contemplated by this Agreement do not create a partnership, joint venture, employment, fiduciary, or similar relationship for any purpose. Neither Client nor Partner 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" or comparable term in any communication is solely for convenience.

10.8 Notices

Notices, approvals, and consents under this Agreement must be in writing and delivered to Client and Partner by mail, courier, fax, or email to the contact person identified in the Subscription Schedule.

10.9 Governing Law; Jurisdiction

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

10.10 No Presumption Against Drafter

This Agreement will be construed without regard to any presumption or rule requiring construction against the party drafting the Agreement.

10.11 Force Majeure

Client will not be required to perform or be held liable for failure to perform if, beyond its control, nonperformance is caused by destruction, material damage, or other unavailability of facilities at project sites; strikes or other labor disputes; national emergency; 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. Client will notify Partner of such problems and will use reasonable efforts to address the problem and carry out its obligations.

10.12 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. Transmission by fax or PDF of executed counterparts constitutes effective delivery.

* * * * *

Client and Partner signed this Agreement as of the Effective Date.

[Client]

[Partner]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A – Subscription Schedule

Partner Contact Information

Partner name	
Partner address	
Partner contact person	Name: Title: E-mail: Telephone:

[] Service

Number of Users	[]
Number of [] tracked	[]
Access to [mobile app]	[yes]

Subscription Fees

ANNUAL FEES	Quantity	Price
Annual subscription (\$___/site)		
Per-[] fees (\$___/student)		
Mobile access (\$___/student)		
SUBTOTAL		

ADDITIONAL SERVICES	Quantity	Price
In-person training (\$___/session)		
Virtual training (\$___/session)		
SUBTOTAL		

GRAND TOTAL		
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Other terms (if applicable)

[topic]	[state other terms]
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Exhibit B – [_____]

Exhibit C – [Other] Services Addendum

This is an addendum to the Service Agreement (“Agreement”), dated as of _____, 20__ between [Client] and _____. All capitalized terms used below will have the meanings assigned to them in the Agreement.

1. Service

Client will provide the [_____] and other related services specified below (“[Other] Services”). Client may in its sole discretion determine the manner and means of performing the [Other] Services in line with the schedule set out below. Partner acknowledges that this schedule is subject to change.

2. Fees

Partner will pay fees to Client as set out below within 30 days after the date this addendum is signed by Client and Partner.

3. Expense Reimbursement

Partner will reimburse Client for reasonable out-of-pocket travel expenses incurred in providing [Other] Services. Client will send Partner an invoice with receipts or reasonable documentation for such expenses. Partner will reimburse Client for any such expenses within 30 days after receipt of an invoice.

4. [Other] Service Content

[_____] may upload [_____] information to the Service for access by Partner. Client grants Partner a nonexclusive, non-transferable, non-sublicensable license to use and reproduce all content provided by Client through [Other] Services (“[Other] Service Content”) solely for Partner’s internal purposes. [Other] Service Content will be treated as “Confidential Information” under the Agreement.

5. Cooperation

Client’s provision of [Other] Services depends on the participation of Partner and the students. Partner will cooperate with and provide timely assistance and approvals to Client in connection with the [Other] Services. Partner’s students may opt out of [Other] Services at any time. If a Partner’s student opts out of the Service, Partner will not be entitled to a refund for any fees. Client accepts no responsibility for the withdrawal of a student from [Other] Services.

6. Partner Service Providers

If Client interacts with any of Partner’s service providers (“Partner Service Provider”) in providing [Other] Services, Client may disclose to a Partner Service Provider, as appropriate, Partner Content, Confidential Information, and Student Records, consistent with the Agreement. If a Partner Service Provider discloses any Partner Content, Partner’s Confidential Information, or Student Records to Client, the information will be deemed provided on behalf of Partner and will be solely governed by the Agreement. The relationship between Partner and each Partner Service Provider is governed by a separate agreement between the parties. Partner is solely responsible for all acts, omissions, and conduct of Partner Service Providers, and for ensuring their compliance with FERPA.

7. Construction of Modification

Except as described in this addendum, the Agreement is unchanged and will continue in full force and effect in accordance with its terms.

Confirmed and agreed:

[Client]

By: _____

Name: _____

Title: _____

Date: _____

[Partner]

By: _____

Name: _____

Title: _____

Date: _____

[Other] Services

Effective Date of [Other] Services (if applicable)	
Description	[describe] Client will provide [_____]
	[describe] Client will provide [_____]
Schedule	

Fees

ANNUAL FEES	Number of Students	Price
[Category] (\$___/student)		
TOTAL		

Other terms (if applicable)

[topic]	[state other terms]
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