

## EDUCATION ELEMENTS MASTER SERVICES AGREEMENT

This Education Elements Master Services Agreement ("**Agreement**") is entered into as of \_\_\_\_\_, ("**Effective Date**"), between Education Elements, Inc., a Delaware corporation having its principal place of business at \_999 Skyway Road, San Carlos CA, 94070\_ ("**EdElements**"), and \_\_\_\_\_, a \_\_\_\_\_ corporation having its principal place of business at \_\_\_\_\_ ("**Customer**").

EdElements and Customer desire to have EdElements perform professional services for Customer, subject to and in accordance with the terms and conditions of this Agreement.

THEREFORE, the parties agree as follows:

### 1. SERVICES

1.1 Professional Services. From time to time, EdElements and Customer may execute statements of work, substantially in the form attached hereto as Exhibit A, that describe the specific services to be performed by EdElements (each such statement of work, as executed by the parties, a "**SOW**"). Each SOW will expressly refer to this Agreement, will form a part of this Agreement, and will be subject to the terms and conditions contained herein. A SOW may be amended only by written agreement of the parties. EdElements will perform the services specified in each SOW (the "**Services**") in accordance with the terms and conditions of this Agreement and of each SOW.

1.2 Customer Responsibilities. In connection with each SOW, Customer will perform Customer's duties and tasks under the SOW, and such other duties and tasks as may be reasonably required to permit EdElements to perform the Services. Customer will also make available to EdElements any data, information and any other materials required by EdElements to perform Services, including, but not limited to, any data, information or materials specifically identified in the SOW (collectively, "**Customer Materials**"). Customer will be responsible for ensuring that all such Customer Materials are accurate and complete.

### 1.3 Touchpoint.

a. Access; Authorized Users. If indicated in a SOW, during the term of the Agreement Customer may have access to EdElement's proprietary cloud-based project management tool "**Touchpoint**". If so, the terms of this Agreement apply to its access and use by Customer and its Authorized Users (defined below). Subject to the terms and conditions of this Agreement, Customer may access and use Touchpoint solely in connection with the Services and for its internal business purposes. Touchpoint may only be accessed and used by Customer's employees and subcontractors who have agreed to abide by the terms of this Agreement and who may only access and use Touchpoint for the purposes of performing their job functions for Customer ("**Authorized Users**"). EdElements may set reasonable limits on the number of Authorized Users permitted to access Touchpoint from time to time. WITHOUT LIMITING ANY OTHER TERMS OF THIS AGREEMENT, TOUCHPOINT IS PROVIDED AS-IS AND AS-AVAILABLE WITHOUT WARRANTY OF ANY KIND.

b. Customer Conduct and Use. Customer is responsible for (i) maintaining the confidentiality of any user IDs and passwords associated with Customer's account, (ii) all activities that occur with respect to Customer's account (whether or not Customer knows about them), (iii) its and its Authorized Users' use of TouchPoint and compliance with this Agreement, and (iv) all Customer Data (defined below). Customer, on behalf of itself and its Authorized Users, agrees not to: (1) use Touchpoint other than as authorized in this Agreement or in any unlawful manner or for any unlawful purpose; (2) modify, alter, decompile or reverse engineer Touchpoint; (3) resell, sublicense, or otherwise make Touchpoint available to any third party; (4) use

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Touchpoint either directly or indirectly to support any activity that is illegal or that violates the proprietary rights of others; (5) interfere with or disrupt the integrity or performance of Touchpoint or any websites or web-based applications; (6) deactivate, impair, or circumvent any security or authentication measures of Touchpoint; (7) access Touchpoint for purposes of monitoring its performance or functionality; or (8) authorize any third parties to do the above.

c. *Customer Data.* As between EdElements and Customer, Customer will own all data uploaded by Customer and its Authorized Users via Touchpoint ("**Customer Data**"). Customer hereby grants EdElements a limited license to access and use Customer Data during the term of the Agreement for the sole purpose of (i) providing the Services to Customer, (ii) assessing whether Touchpoint is being properly implemented and configured, and (iii) monitoring compliance with, and enforcing, this Agreement. Customer is solely responsible for the content of Customer Data and its use of Touchpoint to store and retrieve Customer Data. Customer must ensure that it has all the necessary rights in Customer Data to permit the activities provided for under this Agreement. Notwithstanding the above, EdElements may collect data with respect to Customer's use of Touchpoint such as storage and user limits, and use any such data for its internal business purposes.

EdElements will store the Customer Data for the term of the Agreement. Thereafter, EdElements reserves the right to delete the Customer Data. Should Customer wish to retain data made available to it via Touchpoint beyond the term of the Agreement, Customer acknowledges and agrees that Customer is solely responsible for accessing, downloading and retaining any such data and that EdElements shall not have any obligations in this regard. In the event of any loss or corruption of Customer Data, EdElements shall use its commercially reasonable efforts to restore the lost or corrupted Customer Data from the latest backup of such Customer Data maintained by EdElements in accordance with its current practices. EdElements shall not be responsible for any loss, destruction, alteration, unauthorized disclosure or corruption of Customer Data caused by Customer or any third party. EDELEMENTS'S EFFORTS TO RESTORE LOST OR CORRUPTED CUSTOMER DATA PURSUANT TO THIS SECTION 1.3(d) SHALL CONSTITUTE EDELEMENTS'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF CUSTOMER DATA AND ANY DATA MADE AVAILABLE TO CUSTOMER VIA TOUCHPOINT. Customer will defend, at its expense, and hold EdElements harmless from any action brought against EdElements by a third party to the extent that it is based upon a claim arising from or relating to EdElements use of or access to the Customer Data in accordance with this Agreement.

## **2. PAYMENT**

2.1 Fees and Expenses. For EdElements's performance of Services, Customer will pay EdElements the fees calculated in accordance with the terms set forth in the applicable SOW.

2.2 Payment Terms. EdElements will invoice Customer as outlined in the applicable SOW. Customer will pay each such invoice no later than thirty (30) days after Customer's receipt thereof. Any invoice not paid within such thirty (30) day period will accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum amount permitted by law, whichever is lower.

2.3 Taxes. All fees, expenses and other amounts payable to EdElements hereunder do not include any sales, use, value added or other applicable taxes, tariffs or duties, payment of which will be the sole responsibility of Customer (excluding any taxes based on EdElements's net income). Customer will promptly reimburse EdElements for any such amounts that EdElements pays on Customer's behalf.

**3. OWNERSHIP.** Subject to Customer's rights in the Customer Materials, EdElements will exclusively own all rights, title and interest in and to any, methodologies, specifications, documentation, techniques, utilities, processes, inventions, devices, software programs, tools (including, without limitation, Touchpoint) and materials of any kind used or developed by EdElements or its personnel in connection with performing Services

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(collectively "**EdElements Materials**"), including all worldwide patent rights, copyright rights, trade secret rights, know-how and any other intellectual property rights ("**Intellectual Property Rights**") therein. Customer will have no rights in any EdElements Materials, except as expressly agreed to in writing by the parties. Unless otherwise specified in the applicable SOW, Customer may use the deliverables furnished to Customer under an SOW for its internal business purposes only. As between EdElements and Customer, Customer will exclusively own all rights, title and interest in and to the Customer Materials, including all Intellectual Property Rights therein. Nothing in this Agreement will be deemed to restrict or limit EdElements's right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party; provided that EdElements complies with its obligations under this Agreement with respect to Customer Confidential Information.

#### 4. CONFIDENTIAL INFORMATION

4.1 Confidential Information. "**Confidential Information**" means: (i) Customer Materials and EdElements Materials; (ii) any business or technical information that a party discloses to the other party and designates as "confidential" or "proprietary" at the time of disclosure; and (iii) any information that, due to its nature or the circumstances of its disclosure, the receiving party knows or has reason to know should be treated as confidential or proprietary.

4.2 Exclusions. Confidential Information does not include information that: (i) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure without restrictions on use or disclosure; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (iv) is rightfully received by the receiving party from a third party, who has the right to provide such information and who provides it without restrictions on use or disclosure.

4.3 Use and Disclosure Restrictions. Each party will not use any Confidential Information disclosed by the other party except as necessary for the performance or enforcement of this Agreement. Each party shall take all reasonable steps to ensure that the other's confidential information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement, but in no event will either party use less effort to protect the Confidential Information of the other party than it uses to protect its own Confidential Information of like importance. Each party will ensure that any subcontractors that are permitted to access any of the other party's Confidential Information are legally bound to comply with the obligations set forth herein. The foregoing obligations will not restrict either party from disclosing such Confidential Information: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided that the party required to make such a disclosure gives reasonable notice to the other party to contest such order or requirement; (ii) to its legal or financial advisors; (iii) as required under applicable securities regulations; and (iv) subject to customary restrictions, to present or future providers of venture capital and/or potential private investors in or acquirers of such party.

#### 5. WARRANTY

5.1 Services Warranty. EdElements warrants that the Services will be performed in a good and workmanlike manner consistent with applicable industry standards. This warranty will be in effect for a period of thirty (30) days from the completion of any Services. As Customer's sole and exclusive remedy and EdElements's entire liability for any breach of the foregoing warranty, EdElements will, at its sole option and expense, promptly re-perform any Services that fail to meet this limited warranty or refund to Customer the fees paid for the non-conforming Services.

5.2 Warranty Disclaimers. THE EXPRESS WARRANTIES IN SECTION 5.1 ARE IN LIEU OF, AND EDELEMENTS DISCLAIMS, ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED,

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INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

## 6. INDEMNIFICATION.

6.1 Mutual Indemnification. Each party (an "*indemnifying party*") will defend, at its expense, any action brought against the other party (an "*indemnified party*") by a third party to the extent that it is based upon a claim for bodily injury, personal injury (including death) to any person, or damage to tangible property resulting from the negligent acts or willful misconduct of the indemnifying party or its personnel, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded in final judgment against the indemnified party (or are payable in settlement by the indemnified party).

6.2 Procedure. The foregoing indemnity obligations are conditioned on the indemnified party notifying the indemnifying party promptly in writing of any actual or threatened claim, the indemnified party giving the indemnifying party sole control of the defense thereof and any related settlement negotiations, and the indemnified party cooperating and, at the indemnifying party's request and expense, assisting in such defense.

**7. LIMITATION OF LIABILITY.** IN NO EVENT WILL EDELEMENTS BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) OR FOR COSTS OF PROCURING SUBSTITUTE SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF EDELEMENTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EDELEMENTS'S TOTAL LIABILITY TO CUSTOMER, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE AMOUNTS PAID TO EDELEMENTS BY CUSTOMER UNDER THE SOW GIVING RISE TO ANY LIABILITY HEREUNDER.

**8. NON-SOLICITATION.** During the term of this Agreement and for a period of twelve (12) months thereafter, Customer will not recruit or otherwise solicit for employment any EdElements employees or subcontractors who participated in the performance of Services without EdElements's express prior written approval.

## 9. TERM AND TERMINATION

9.1 Term. This Agreement will commence on the Effective Date and, unless terminated earlier in accordance with the terms of this Agreement, will remain in force and effect for as long as EdElements is performing Services pursuant to any SOW.

9.2 Termination. Either party may terminate this Agreement (including all SOWs) if the other party breaches any material term of this Agreement or SOW and fails to cure such breach within thirty (30) days after receipt of written notice thereof. EdElements may immediately terminate this Agreement if Customer breaches the terms of Section 1.3.

9.3 Effect of Termination. Upon the expiration or termination of this Agreement, and except as otherwise set forth in this Agreement: (i) EdElements will promptly return to Customer all Customer Materials; (ii) each party will promptly return to the other party all Confidential Information of the other party in its possession or control; and (iii) Customer will, within thirty (30) days after receipt of EdElements's invoice, pay all accrued and unpaid fees and expenses.

9.4 Survival. The rights and obligations of the parties contained in Sections 1.3, 2, 3, 4, 6, 7, 8, 9.3, 9.4 and 10 will survive the expiration or termination of this Agreement or any SOW.

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## 10. GENERAL

10.1 Relationship of the Parties. EdElements is performing Services as an independent contractor and nothing in this Agreement will be construed as establishing an employment, agency, partnership or joint venture relationship between Customer and EdElements or any EdElements personnel. EdElements has no authority to bind Customer by contract or otherwise. EdElements acknowledges and agrees that its personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Customer makes available to its employees. EdElements is solely responsible for all taxes, expenses, withholdings and other similar statutory obligations arising out of the relationship between EdElements and its personnel and the performance of Services by such personnel.

10.2 Assignment. EdElements may not assign this Agreement without Customer's prior written consent, except that EdElements may assign this Agreement, without Customer's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, the sale of all or substantially all of EdElements's assets, or the sale of that portion of EdElements's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and benefit the parties and their respective successors and assigns.

10.3 No Election of Remedies. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will not be deemed an election of remedies and will be without prejudice to its other remedies under this Agreement or available at law or in equity or otherwise.

10.4 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding its body of law controlling conflict of laws. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and the parties irrevocably consent to the personal jurisdiction and venue therein.

10.5 Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

10.6 Notices. All notices required or permitted under this Agreement will be in writing, will reference this Agreement, and will be deemed given: (i) when delivered personally; (ii) one (1) business day after deposit with a nationally-recognized express courier, with written confirmation of receipt; or (iii) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid. All such notices will be sent to the addresses set forth above or to such other address as may be specified by either party to the other party in accordance with this Section.

10.7 Waiver. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

10.8 Entire Agreement. This Agreement, together with all Statements of Work, constitutes the complete and exclusive agreement of the parties with respect to its subject matter and supersedes all prior understandings and agreements, whether written or oral, with respect to its subject matter. [In the event of a conflict, the terms and conditions of each SOW will take precedence over the terms and conditions of this Agreement. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by the parties hereto.

10.9 Force Majeure. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control,

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including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, acts of terror, riot, acts of God or governmental action.

10.10 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**EDUCATION ELEMENTS, INC.:**

**CUSTOMER:**

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT A**

**STATEMENT OF WORK**

This SOW Number \_\_\_\_ is issued under and subject to all of the terms and conditions of the Professional Services Agreement dated as of \_\_\_\_\_, 2017, between Education Elements, Inc. ("**EdElements**") and \_\_\_\_\_ ("**Customer**").

**[NTD: Insert SOW]**

**ACKNOWLEDGED AND AGREED:**

**EDUCATION ELEMENTS, INC:**

**CUSTOMER:**

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_