

**CONSULTING AGREEMENT BY AND BETWEEN
EDGILITY CONSULTING AND EAST BAY INNOVATION ACADEMY**

This agreement (the “Agreement”) is made on December 6, 2021 by and between Edgility Consulting LLC, a New Hampshire limited liability company (“**Consultant**”) and East Bay Innovation Academy (“**Client**”) (collectively referred to as “**Parties**”). Client wishes to retain Consultant in support of its search for an Executive Director (the “Search”) and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Background and Purpose. Consultant provides human resources consulting and executive search services. Client desires to retain Consultant and Consultant agrees to provide to Client services on the terms and conditions set forth herein.
2. Services. Consultant shall provide to Client the services set forth in **Exhibit A (“Services”)**, which is attached hereto and expressly incorporated herein by this reference. **Exhibit A** may be amended from time to time by the Parties pursuant to a written amendment signed by both Parties pursuant to the terms of this Agreement.
3. Duties of Client. Client agrees to cooperate with Consultant in the performance of Consultant’s services and, specifically, Client agrees to the duties assigned to Client within this Agreement and as set forth in **Exhibit A** hereto.
4. Term. The Term of Services shall commence as of the date first written above and shall terminate on the earliest of the following events:
 - (a) If an offer of employment from Client for the position of Executive Director (the “Search Position”) is accepted by any individual, then the Search shall be deemed successfully completed as of the date of said acceptance and, as such, payment of all final fees or portion(s) of fees due to Consultant shall be paid as of that date pursuant to Section 5 herein, and the term of the Agreement will end naturally thereupon;
 - (b) If a period of one hundred and eighty (180) days elapses from the date that this Agreement is executed by Client without an offer of employment from Client for the Search Position being accepted by any individual, the Parties agree that the reasonable time period for the Search will have elapsed, such that the payment of all final fees or portion(s) of fees due to Consultant shall be paid pursuant to Section 5 herein, and the Term of Services will end naturally thereupon, unless extended by the Parties by mutual written agreement; or
 - (c) On a date pursuant to the Early Termination provisions set forth in Section 7 herein, which shall be considered “Early Termination.”

5. Compensation. As consideration for providing the Services, Client shall pay to Consultant as follows:

5.1. Client shall pay Consultant a consulting fee in the amount of \$50,000 according to the following schedule:

- A. \$20,000 due upon execution of this Agreement; and
- B. \$15,000 due upon three (3) candidates being advanced by the Search Committee for Committee Interviews or on March 31, 2022 whichever date comes earlier in time;
- C. \$15,000 due upon the date any individual accepts an offer by Client for the Search Position.

Client shall reimburse Consultant for all approved expenses necessary to the performance of Consultant's duties, including but not limited to any advertising reimbursements, within thirty (30) days of Consultant's submission of an invoice or reimbursement request with supporting documentation to Client. Other possible expenses include, but are not limited to, necessary travel, meals and lodging, long distance telephone charges, photocopying, messenger and delivery services and postage.

Payment is expected upon the provision of services. If Consultant does not receive payment in full on any invoice within thirty (30) days, late charges at 0.8333% interest per month (10% per year) will be imposed on Client's unpaid balance after fifteen (15) days. Client's unpaid balance is determined by taking the beginning balance of Client's account for each month, adding any new charges and subtracting any payments made to Client's account. Consultant will then multiply this amount by the .8333% monthly periodic interest rate to compute the late charge for Client's account for that month.

5.2. All invoices and a copy of Consultant's W9 will be sent to Michelle Cho at michelle.cho@eastbayia.org. If ACH is the preferred method of payment, Client will send a copy of their ACH form to eaustin@edgilityconsulting.com. If paying by check, Client will send payment to the remittance address on the invoice, not the address listed on Consultant's W9.

5.3. Consultant agrees that if a candidate hired by Client in association with the Services ceases to be employed by the Client, whether voluntarily or involuntarily, within six (6) months of the date the candidate formally accepts the offer in writing, then Consultant will renew the search in keeping with the scope of the Services in this Agreement. Except for direct expenses, Consultant shall not charge Client any additional cost in association with any such renewed Services beyond the payments provided for within this Agreement.

5.4. Client agrees and grants permission for Consultant to list Client's name and/or logo as part of a list of clients for whom Consultant has performed services, which may be listed on Consultant's website or within other printed or electronic materials.

6. Hiring of Candidates for Other Positions. Client agrees that if, during the Term of Services or within six (6) months thereafter, it fills any role or position other than the Search Position, through the hiring as an employee, or engagement as an independent contractor, of any individual identified or introduced to it by Consultant, then Client shall pay Consultant a referral payment of ten thousand (\$10,000) dollars (the "Referral Payment"). A Referral Payment shall be individually triggered by each applicable individual so hired or engaged in a non-Search Position by Client. Any such Referral Payment shall be in addition to, and shall not supersede or replace, any other payments or compensation due or owing pursuant to this Agreement.

7. Early Termination.

7.1. Consultant and Client shall each have the right to end the Term of Services early by providing written notice to the other party at least thirty (30) days in advance of the termination date, and such termination shall be subject to the Early Termination Payments set forth in Section 8 herein.

7.2. Consultant shall have the right to immediately end the Term of Services by written notice to Client if Client breaches any material provision of this Agreement, including, without limitation, the duties set forth in Section 3 above, or the making of payments to Consultant when due under the terms of this Agreement, and such termination shall be subject to the Early Termination Payments set forth in Section 8 herein.

8. Early Termination Payments.

8.1. In the event that the Term of Services within this Agreement is terminated pursuant to Section 7.1 or Section 7.2, Client shall pay any and all fees, expenses, and costs incurred by Consultant, or otherwise due and owing, as of the effective date of the termination, including any fees, expenses, or costs which may be due pursuant to Section 8.2 herein.

8.2. If Client wishes to end the Term of Services pursuant to Section 7.1 without making a hire of any kind for Search Position the fees, expenses and costs due and owing to Consultant as of the effective date of termination shall include the following:

(a) If the Search is terminated by Client within sixty (60) days of Client signing this Agreement without making a hire of any kind for the Search Position then the second and third installments of the consulting fee, as set forth in Section 5, will be waived in its entirety, but any other outstanding fees, expenses, and costs shall be paid as of the effective date of termination.

(b) If the Search is terminated by Client more than sixty (60) days of Client signing this Agreement without making a hire of any kind for the Search Position, then the third installment of the consulting fee (\$15,000) will be waived, but the second installment (\$15,000) shall be paid as of the effective date of the termination, along with any other outstanding fees, expenses, and costs. Notwithstanding the foregoing, if the Client fills the Search Position with an external candidate within twelve (12) months following the Early Termination of the Term of Services, then the full remainder of the consulting fee set forth in Section 5(B) shall be immediately due and paid to Consultant.

9. Conflict of Interest. Consultant agrees to devote the time and resources necessary to perform the services for Client provided for in this Agreement but shall be free to work for any other client(s) during the term of this Agreement as long as that work does not prohibit Consultant from performing services for Client.

10. Confidential Information; Non-Disclosure.

10.1. During the term of this contract, Consultant may have access to and become acquainted with information of a confidential or proprietary nature ("Confidential Information"), which may be either applicable or related to the present or future business of Client or the business of its members and/or donors. Such Confidential Information shall be denoted as such by Client and includes, but is not limited to, donor's personal information, giving history, financial information, member's financial information, strategic plans and other information concerning donors, members and/or vendors. Consultant shall (i) not use for its own benefit or knowingly disclose to or use for the benefit of any other person, any Confidential Information without Client's prior written consent; (ii) use at least the same degree of care and precautions to protect Client's Confidential Information from disclosure that it employs with respect to its own confidential information; (iii) disclose Confidential Information only to those of its employees or contractors who require access to perform its obligations under this Agreement; and (iv) take appropriate action by instruction, agreement or otherwise with Client's employees or other persons allowed such access to satisfy the foregoing obligations.

10.2. This Section shall not apply to any information which (i) is or becomes publicly available through no fault of Consultant; (ii) is already in Consultant's possession without restriction on disclosure when disclosed by Client; (iii) is independently developed by Consultant without use of Confidential Information; or (iv) is rightfully obtained from third parties without restriction on disclosure.

11. Independent Contractor.

11.1. This Agreement will not render Consultant an employee, partner, agent of, or engaging in a joint venture with Client for any purpose. Consultant is and will remain for all purposes an independent contractor. Client shall furnish Consultant a copy of IRS Form

1099, setting forth Consultant's annual income no later than the end of January of the year following any year during which services were rendered.

11.2. Contractor shall be responsible for paying all federal and state taxes and FICA taxes. Consultant shall complete the services required under this Agreement according to its own means and methods of work, which shall be in the exclusive charge and control of Consultant, the Company being interested only with the ends achieved and results obtained. Consultant shall be responsible for the procurement, cost, and use of all materials, supplies, equipment, and/or additional labor needed or required to complete the requirements of the services provided pursuant to this Agreement.

11.3. Consultant acknowledges that Consultant shall not be entitled to any of the benefits provided by the Company to its employees, including but not limited to paid time off, health and welfare benefits, health and accident insurance, life insurance, or similar arrangements.

11.4. Consultant shall be entirely and solely responsible for its acts and the acts of any of its personnel, agents, or subconsultants while engaged in the performance of services under this Agreement. Any employees or subconsultants of Consultant shall also be bound to the terms and conditions of this Agreement.

11.5. Consultant hereby agrees and acknowledges that Consultant is not and that Consultant will not represent or hold itself out to be an employee, agent, partner or joint venturer of or with the Company. Neither the Company nor Consultant shall have the authority to bind the other in any respect. Consultant hereby acknowledges and agrees that Consultant will be solely and entirely responsible for Consultant's acts, and those of its employees, including acts of omission, during the performance of Services pursuant to this Agreement. Any individual that Consultant engages to enable Consultant to perform the services necessary to achieve the end results expected by the Company shall work under the direction and control of the Consultant and shall be the employee of the Consultant. The Company shall have no control over such individual and such individual shall not be the employee of the Company or have any relationship with the Company whatsoever.

12. Indemnity. Client will indemnify, defend, and hold Consultant free and harmless from any obligations, costs, claims, judgments, attorneys' fees, and attachments arising from, growing out of, or in any way connected with services provided by Consultant for Client under the terms of this Agreement, unless and only to the extent that an arbitrator finds that Consultant has committed gross negligence or willful misconduct in the conduct of the Services and holds Consultant liable in whole or in part. Notwithstanding anything to the contrary in the foregoing sentence, Consultant shall indemnify, defend, and hold Client free and harmless from any obligations, costs, claims, judgments, attorneys' fees, and attachments suffered by Client as a result of a third party legal action caused by the gross negligence or willful misconduct of Consultant; provided that such acts or omissions

by Consultant were taken without the approval or acquiescence of the Client or an agent designated for this purpose by the Client.

13. Dispute Resolution. Any dispute, controversy or claim arising out of or relating to this Agreement, including any dispute relating to interpretation of or performance under the Agreement (“**Dispute**”), shall be resolved in the manner set forth in this Section 13, which shall be in lieu of litigation in any court, and the Parties specifically waive any right to a jury trial of any dispute between them.

13.1. Negotiation. The Parties will attempt in good faith to resolve the Dispute promptly by negotiations between senior representatives of the Parties who have authority to settle the Dispute (each, a “**Representative**”).

13.2. Mediation. If a dispute arises between the Parties to this agreement, whether arising from or related to the Agreement itself or arising from alleged extra-contractual facts prior to, during, or subsequent to the agreement, including, without limitation, fraud, misrepresentation, negligence, or any other alleged tort, and if the dispute cannot be settled through negotiation, the Parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association (“AAA”) under its Commercial Mediation Procedures before resorting to the arbitration proceedings laid out in Section 13.3.

13.3. ARBITRATION AGREEMENT.

(a) If mediation is unsuccessful, any dispute arising between the Parties, whether arising from or related to the Agreement itself or arising from alleged extra-contractual facts prior to, during, or subsequent to the agreement, including, without limitation, fraud, misrepresentation, negligence, or any other alleged tort, the dispute shall be decided by arbitration in accordance with Title 9 of the United States Code and Chapter 542 of the New Hampshire Revised Statutes Annotated. The arbitration proceeding shall be conducted under the Commercial Rules of the American Arbitration Association (hereinafter, “AAA”), or, if the AAA has ceased to exist, its successor organization or a similar organization at the time demand is made.

(b) Notice of the demand for arbitration must be provided, in writing, to the other Party at the locations specified in Section 14 of this Agreement and to the AAA. Demand must be made within one hundred and eighty (180) days after the dispute has arisen, time is of the essence. Said arbitration will occur within thirty (30) consecutive days after the Party demanding arbitration delivers the written demand on the other Party, unless impracticable or the Parties mutually agree otherwise in writing. Arbitration shall be initiated and conducted in Boston, Massachusetts or at such other location mutually agreed by the Parties.

(c) The arbitrator shall be selected by Consultant from a list of five (5) arbitrators provided by the American Arbitration Association. The arbitrators will be bound to adjudicate all disputes in accordance with the laws of the State of New Hampshire.

(d) The arbitrator shall have the power to grant all legal and equitable remedies, including, but not limited to, injunction, specific performance, cancellation, accounting, attorney fees, and compensatory damages, except only that punitive damages shall not be awarded. The arbitrator may also award prejudgment interest as applicable under New Hampshire RSA 336.

(e) The arbitrator shall issue a binding decree within thirty (30) days of the conclusion of arbitration.

(f) The decision of the arbitrator shall be final and binding on both Parties.

(g) This Section 13 provides the sole recourse for the settlement of any disputes arising out of, in connection with, or related to this Agreement.

14. Notice. Any notice under this Agreement shall be in writing, and any written notice or other document shall be deemed to have been duly given (i) on the date of personal service on the Parties, (ii) three days after deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, (iii) one day after being sent by professional or overnight courier or messenger service guaranteeing one day delivery, with receipt confirmed by the courier. Unless otherwise provided in writing, any such notice shall be delivered or addressed to the Parties as follows:

Consultant:

Edgility Consulting, LLC

17 Elm Street
Suite C211
Keene, NH 03431

Attn: Christina Greenberg

Client:

East Bay Innovation Academy

[Address]

[Address]

[City, State Zip]

Attn: [Name]

Failure to conform to the requirement that mailings be done by registered or certified mail shall not defeat the effectiveness of notice actually received by the addressee.

15. Entire Agreement. This document constitutes the entire agreement between the Parties, with all oral agreements being merged in this document, and supersedes all prior representations. There are no representations, agreements, arrangements, or understandings, oral or written, between or among the Parties relating to the subject matter of this Agreement that are not fully expressed herein.

16. Waiver. Any of the terms or conditions of this Agreement may be waived at any time by the party entitled to the benefit thereof, but no such waiver shall affect or impair the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition hereof.

17. Amendment. The provisions of this Agreement may be modified at any time by written agreement of the Parties. Any such agreement hereafter made shall be ineffective to modify this Agreement in any respect unless in writing and signed by the Parties against whom enforcement of the modification or discharge is sought.

18. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement which can be given effect without the invalid provision shall continue in full force and effect and shall in no way be impaired or invalidated.

19. Binding Effect. The Parties expressly agree that this Agreement is binding on each other's successors, heirs, assigns, beneficiaries, executors, administrators, and trustees.

20. Effective Date. This Agreement is effective as of the date signed by all Parties.

21. Governing Law. The rights and obligations of the Parties and the interpretation and performance of this Agreement shall be governed by the laws of the State of New Hampshire, excluding its conflicts of laws rules.

22. Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action against any party to this Agreement.

23. Captions. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

24. Construction. This Agreement shall not be construed against any party, and instead shall be construed as though all Parties have participated in its drafting. No promises or inducements have been made to the Parties to this Agreement. This Agreement is entered into freely and voluntarily.

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

IN WITNESS WHEREOF, the Parties have executed this Agreement.

“Consultant”

Edgility Consulting, LLC
17 Elm Street
Suite C211
Keene, NH 03431

“Client”

East Bay Innovation Academy
[Address]
[Address]
[City, State Zip]

By: _____

By: _____

Name: Christina Greenberg

Name: [Name]

Title: Partner

Title: [Title]

Date: _____

Date: _____

EXHIBIT A DESCRIPTION OF SERVICES

Needs Assessment

The first stage of our search process is to get better acquainted with the priorities and needs of key stakeholders including board members, senior leaders, staff, and community members. This includes conversations with these constituents about their values and priorities as well as a review of materials related to the organization's current health and strategic vision. From this information, we develop an ideal candidate profile, key criteria, and position competencies.

Needs Assessment Deliverables

- Final job description for wide distribution
- 2-3 candidate profiles to guide our marketing efforts
- Compensation study to evaluate market for position
- List of recommended job posting sites
- Candidate outreach templates
- Targeted lists of candidates to cultivate
- Interview protocol for Edgility-led phone conversations

Candidate Cultivation

Our team will design and execute against the detailed recruitment plan we develop with your input. We circulate the opportunity to our internal list of over 20,000 nominators as well as other high-potential candidates that we research based on your criteria while conducting cold calls and personalized email outreach to high potential leads. We also have access to a number of databases of quality candidates from prominent educator preparation and support programs that we leverage to spread the posting to a wide group of talented individuals.

Candidate Cultivation Deliverables

- Cultivation calls, outreach emails, engagement of referral networks
- Pool of potential candidates for cultivation and initial screening
- Real-time tracking and reporting of metrics related to marketing outreach, email and phone responses, and applicant sources

Candidate Screening and Assessment

Once the recruitment campaign has introduced us to quality applicants, our team manages all of the candidate flow from our applicant tracking system, including screening resumes, conducting initial cultivation calls, leveraging recorded video interviewing technology and leading detailed phone interviews with candidates before passing them onto your team.

Candidate Screening and Assessment Deliverables

- Weekly or bi-weekly calls to discuss overall candidate pool and progress of individual applicants

- Submission of three or more candidates for initial client interviews

Client Search Support

As experts in the assessment of the capability of education leaders, our firm is also well-equipped to support your candidate diligence process by sharing best practice-based materials, project managing your onsite interview process, and facilitating hiring committee interviews and debrief conversations.

Client Search Support Deliverables

- Interview guides, performance tasks, rubrics, and other materials for client use during your semi-finalist and finalist round screening
- Onsite interview support including scheduling and oversight of finalist interviews and facilitation of committee debrief sessions
- Reference and background checks for finalists

Client Responsibilities

In order to support this work, Client will:

- Make pertinent senior leadership staff available for conversations and meetings
- Provide Consultant with relevant organizational information
- Notify Consultant immediately of any changes to the project plan, expected deliverables, or timeline