

## USE AGREEMENT

**THIS USE AGREEMENT** made this 4<sup>th</sup> day of May, 2022, is between GOLDEN GATE ACADEMY, an entity held by the NORTHERN CALIFORNIA CONFERENCE OF SEVENTH-DAY, a California non-profit religious corporation, hereinafter called "Licensor", and EAST BAY INNOVATION ACADEMY, a 501(c)(3) tax-exempt organization, hereinafter called "Licensee". Licensor hereby grants to Licensee the use of a portion of their facility, located at 3800 Mountain Blvd., Oakland, CA 94619-1630, upon the following terms and conditions:

### I. RECITALS

Licensor is the sole owner of the premises described below herein, and agrees to grant and license the use of the premises to a suitable Licensee for the purpose for which it is intended.

Licensee agrees to use the premises as a place for conducting an educational program.

Licensee agrees to conduct itself in compliance with all known local, state and federal laws governing all aspects of Licensee's business operations including, but not limited to regulations for worker's health and safety, hazardous material use, manufacturing processes, and product sales.

As of the date of this agreement, the premises herein have not been inspected by a Certified Access Specialist.

The parties agree to enter into this Agreement defining their rights, duties and liabilities relating to the premises.

### II. TERM

The term of this Agreement shall commence on the 1<sup>st</sup> day of August, 2022, and terminate on the 30<sup>th</sup> day of June, 2022. No part of this provision is meant to alter the terms of this Agreement under Articles XII and XIII that deal with the remedies of the parties in case of breach or default.

### III. USE COST

Licensee agrees to pay real property taxes and current year installments of assessments which encumber the premises, if any, which occur as a result of Licensee's activities and use of the property, and further agrees to purchase and maintain liability and comprehensive insurance coverage for the premises. The specific requirements as to these elements of additional use costs are delineated in Article IX.

The Licensee shall pay to the Licensor in legal tender at the address specified herein, or furnished pursuant hereto, during the term of this Agreement, a sum of Twenty-Six Thousand Five Hundred Dollars (\$28,090.00) per month payable as arranged with the Licensor.

Any alterations, additions, changes, or modifications to said building or property, shall be with the express written consent of the Licensor and at the expense of the Licensee. In the event of any additions, alterations, changes or modifications all specifications and adjustments to use cost shall be mutually agreed upon by both parties.

### IV. USE OF PREMISES

The premises shall be used as a place of conducting an educational program and for other purposes related thereto. The specific use of the premises (approximately 25,551 sq. ft.) shall be listed as follows:

- A. OPERATIONAL HOURS are Monday through Friday, 7:00 a.m. – 6:00 p.m. The gymnasium is only available for use Wednesday and Friday until 5:00 p.m. or until ½ hour before sunset whichever comes first. The gymnasium must be cleared of all activities on Monday, Tuesday and Thursday by 3:45 pm p.m. Gate to be opened at 7:00 a.m. and locked by 6:00 p.m. All Licensee's staff will be off premises by 6:00 p.m. unless Licensor is notified.
- B. Licensee may use the school buildings listed in Exhibit A attached hereto, and which shall be incorporated as if fully set forth herein. Licensee may use the school campus in conjunction and cooperation with Licensor and other authorized users of the premises whose use may overlap with Licensee's use of the premises. Licensor agrees to provide Licensee with at least thirty (30) days written notice of any use of the premises by any other authorized user during the operational hours, and Licensee agrees to provide Licensor with a schedule of expected use of the premises during the term of this Agreement and at least thirty (30) days written notice of any changes to the use of the premises.
- C. Licensee shall use existing equipment located in classrooms including but not limited to, desks, chairs, blackboard, and the like. Licensee is responsible for providing other required equipment as needed.

Licensee and Licensor shall work together to coordinate sharing of equipment on the premises.

- D. The outdoor basketball courts are not included in the campus square footage and shall not be used without prior consent and a separate use agreement. Outdoor courts require an additional fee.
- E. Licensee may use the premises for ten (10) evenings or Sunday events subject to Licensor's consent and at least thirty (30) days written notice. Current rental rates will be charged for any additional evening or Sunday events.
- F. Licensor shall provide janitorial services maintaining clean classrooms and office as necessary.

#### **V. PROHIBITED USES**

Licensee shall not commit or permit the commission of any acts on the premises nor use or permit the use of the premises in any way that:

- A. Will increase the existing rates for or cause cancellation of any fire, casualty, liability, or other insurance policy insuring the building or its contents;
- B. Violates or conflicts with any law, statute, ordinance, or governmental rule or regulation, whether now in force or hereinafter enacted, governing the premises or the building;
- C. Obstructs or interferes with the rights of other parties or occupants of the building or injures or annoys them; or
- D. Constitutes the commission of waste on the premises or the commission or maintenance of a nuisance as defined by the laws of the State of California.

#### **VI. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS**

No portion of the building or property shall be altered by Licensee without the prior written consent of the Licensor. Any alterations, additions or improvements so approved shall be performed in a workmanlike manner and shall not weaken or impair the structural strength or lessen the value of the building or the premises or change the purposes for which the building, or any part thereof, may be used. Where alterations, additions, or improvements are agreed to by the Licensor, Licensee agrees to file all plans and specifications with and receive approval from all governmental departments or authorities having jurisdiction and any public utility company having an interest therein, and all work shall be done in accordance with requirements of local regulations. All such improvements, alterations, or additions shall be at the expense of the Licensee unless otherwise agreed to in writing and shall become part of the demised premises and the sole property of the Licensor, except that all moveable trade fixtures installed by the Licensee shall be and remain the property of the Licensee.

#### **VII. MAINTENANCE AND REPAIRS**

Licensee shall use all reasonable precaution to prevent waste, damage, or injury to the demised building and property. In the event of damage, waste or injury to said property by Licensee, Licensee shall, at its own cost and expense, repair, replace, or restore to a good, safe and substantial condition the building, property and any improvements, additions, and alterations thereto.

The Licensee covenants to maintain the premises clean and in good order, free from waste materials or rubbish caused by or resulting from his business.

The Licensor agrees to be responsible for structural damage to the premises caused by natural events (i.e. earthquake, windstorm, etc.), except as is covered by insurance. Licensor also covenants to keep the lawns, trees, vines, bushes and hedges of the demised premises cut, watered and trimmed, during the term of this Agreement.

Licensee agrees to accept responsibility for graffiti, and other defacing of property due to its usage. Materials and time for repairs will be billed and invoiced separately.

#### **VIII. ENVIRONMENTAL COMPLIANCE**

Licensee shall conduct all of its activities on the Property in compliance with, and shall not cause or permit the Property to be in violation, as a result of Licensee or its agents' activities, of any federal, state or local laws, statutes, ordinances, orders, guidelines, rules or regulations relating to health and safety, industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, air, soil and ground water conditions. Licensee hereby covenants and agrees that neither it nor any agent, servant, or employee, shall use, generate, manufacture, handle, store, treat, discharge, release, bury or dispose of on, under or about the Property, or transport to or from the Property, any Hazardous Substance. Without limiting the generality of the foregoing, provisions of this subsection, Licensee agrees at all times to comply fully and in a timely manner with, and to cause all of its employees, agents, contractors, subcontractors and any other persons associated with Licensee's use of the athletic field occupying or present on the Property to so comply with, all federal, state and local laws, statutes, ordinances, orders, guidelines, rules and regulations

applicable to underground storage tanks or to the use, generation, manufacture, handling, storage, treatment, discharge, release, burial or disposal of any Hazardous Substance now or hereafter located or present on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance. Licensor shall bear all costs associated with such compliance required for remedial or removal action taken in response to any Hazardous Substance which is located or present on, under or about the Property, or which is the result of any action taken by Licensor.

If the presence, release, threat of release, placement on, under or about the Property, or the use, generation, manufacture, storage, treatment, discharge, release, burial or disposal on, under or about the Property, or transportation to or from the Property, of any Hazardous Substance caused by Licensee or its agents: (i) gives rise to liability, costs or damages (including, but not limited to, a response action, remedial action, or removal action) under RCRA, CERCLA, the State Toxic Substances Laws, or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decision of a state or federal court, (ii) causes or threatens to cause a significant public health effect, or (iii) pollutes or threatens to pollute the environment, Licensee shall promptly take any and all response, remedial and removal action necessary to clean up the Property and any other affected property and mitigate exposure to liability arising from the Hazardous Substance, whether or not required by law or by any governmental entity. Licensee shall comply with all federal, state or local laws, ordinances and regulations relating to any such response, remedial or removal action, caused by Licensee.

Licensee shall indemnify, defend with counsel selected by Licensor, protect and hold harmless Licensor, its directors, officers, employees, agents, assigns and any successor or successors to Licensor's interest under the Agreement from and against all claims, actual damages (including but not limited to special and consequential damages), punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys', engineers', consultants' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Property used by Licensee or its agents, or any indemnified party at any time directly or indirectly arising from or attributable to (i) any breach by Licensee of any of its agreements, warranties or representations set forth in this Agreement, or (ii) any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any Hazardous Substance on, under or about the Property, undertaken by the Licensee or its agents, regardless of whether undertaken due to governmental action. To the fullest extent permitted by law, the foregoing indemnification shall apply regardless of the fault, active or passive negligence, breach of warranty or contract of Licensor. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify Licensor from any liability pursuant to such section.

Licensee shall promptly give Licensor (i) a copy of any notice, correspondence or information it receives from any federal, state or other government authority regarding Hazardous Substances on, under or about the Property or Hazardous Substances which affect or may affect the Property, or regarding any actions instituted, completed or threatened by any such governmental authority concerning Hazardous Substances which affect or may affect the Property, (ii) written notice of any knowledge or information Licensee obtains regarding Hazardous Substances on, under or about the Property or expenses or losses incurred or expected to be incurred by Licensee, third party or any government agency to study, assess, contain or remove any Hazardous Substances on, under, about or near the Property for which expense or loss Licensee may be liable or for which a lien may be imposed on the Property, (iii) written notice of any knowledge or information Licensee obtains regarding the release or discovery of Hazardous Substances on, under or about the Property or on other sites owned, occupied or operated by Licensee or by any person for whose conduct Licensor is or may be responsible, or whose liability may result in a lien on or otherwise affect the Property, (iv) written notice of all claims made or threatened by any third party against Licensee or the property relating to damage, contribution, cost recovery compensation, loss of injury resulting from any Hazardous Substance, and (v) written notice of Licensee's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property to be classified as "border-zone property" under the provisions of California Health and Safety Code Sections 25220 et seq. or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any of the statutes cited in herein of this Agreement or any regulation adopted pursuant thereto.

Without Licensor's prior written consent, which shall not be unreasonably withheld or delayed, Licensee shall not

take any remedial action in response to the presence of any Hazardous Substance on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims referred to in this Agreement, which remedial action, settlement, consent or compromise might, in Licensor's reasonable judgment, impose a risk of liability on Licensor; provided, however, that Licensor's prior consent shall not be necessary in the event that the presence of any Hazardous Substance on, under or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Licensor's consent before taking such action, provided that in such event Licensee shall notify Licensor as soon as practicable of any action so taken, Licensor agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, or (ii) Licensee establishes to the reasonable satisfaction of Licensor that there is no reasonable alternative to such remedial action.

## IX. INSURANCE

During the term of this Agreement the Licensee shall obtain and maintain the following insurance:

- A. **Property Insurance.** Licensee shall maintain property insurance on all of Licensee's personal property, Trade Fixtures, inventory, Licensee alterations and utility installations on the Premises. Such insurance shall be at full replacement coverage and proceeds from such insurance shall be used to repair or replace the property described hereinabove. Licensor is in no way responsible for any damage or loss of Licensee's personal property.
- B. **Commercial General Liability Insurance.** Licensee shall maintain Commercial General Liability insurance against claims for bodily injury, personal and advertising injury and property damage based upon or arising out of Licensee's use, occupancy and maintenance of the Premises. Licensee will hold Licensor harmless from any liabilities related to injury or property damages of Licensee, Licensee's students, Licensee's employees, or other invitees of Licensee. Such coverage shall be written on an occurrence form with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The policy shall include contractual liability coverage and be endorsed to name the Northern California Conference of Seventh-day Adventists, P.O. Box 619015, Roseville, CA 95661, as certificate holder and additional insured.
- C. **Automobile Liability Insurance.** Licensee shall maintain Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per accident for all owned, non-owned and hired automobiles.
- D. **Workers' Compensation Insurance.** Licensee shall maintain Workers' Compensation insurance with statutory limits and Employer's Liability coverage with limits of not less than \$1,000,000 per accident or disease.
- E. Licensee shall provide any other insurance as necessary to protect Licensor against insurable hazards as are commonly insured against for the type of business activity that Licensee will conduct.
- F. All insurance, as required by this section, shall be carried in favor of the Licensor and Licensee as their respective interests may appear. All insurance shall be purchased and maintained from and with responsible companies, and certificates of insurance evidencing the coverage and limits required under this Agreement shall be delivered to Licensor upon occupation of the premises and on the first of January of each year during the contract period.

## X. UNLAWFUL OR DANGEROUS ACTIVITY

Licensee shall not occupy or use all or any part of the premises for any unlawful, disreputable or ultra-hazardous

business purpose or activity, nor operate or conduct its business in a manner which is found by a court of competent jurisdiction to be a "nuisance". A violation of this article shall constitute a breach of this Agreement.

#### **XI. INDEMNITY**

The Licensee shall indemnify the Licensor against all expenses, liabilities, and claims of every kind, including but not limited to reasonable attorney's fees, by or on behalf of any person or entity arising out of either (1) a failure by Licensee to perform any of the terms or conditions of this Agreement; (2) any injury or damage happening on or about the Premises; (3) failure to comply with any law of any governmental authority; or (4) any mechanics lien or security interest filed against the demised premises or equipment, materials, or alterations of building or improvements thereon, the filing of which is caused by Licensee or its agents. Said indemnification is limited to injury or damage attributable to Licensee or its agents' use of the premises.

#### **XII. DEFAULT AND BREACH**

Any one of the following events shall constitute a default of this Agreement by Licensee;

- A. Voluntary or involuntary bankruptcy on the part of the Licensee;
- B. Failure by Licensee to pay the use cost when said use cost shall become due, and the Licensee shall not make payment within thirty (30) days after written notice thereof by the Licensor to the Licensee;
- C. Failure of the Licensee to perform or comply with any of the conditions of this Agreement and if the nonperformance or noncompliance shall continue for a period of thirty (30) days after written notice thereof by the Licensor to the Licensee; and
- D. Vacation or abandonment of the Premises by the Licensee.

This section shall not be construed as a limitation on Licensor to declare a default.

#### **XIII. REMEDIES ON DEFAULT**

In the event of default by Licensee on any of the following, the rights of the Licensor shall be, in addition to other statutory, common law, and case law rights;

- A. The Licensor shall have the right to cancel and terminate this Agreement;
- B. The Licensor shall, upon default, acquire full access and title to equipment and inventory up to an amount evaluated to be equal to the Licensee's obligations to the Licensor;
- C. The Licensor may elect, but shall not be obligated, to make any payment required of Licensee herein or comply with any agreement, term, or condition required hereby to be performed by the Licensee, and the Licensor shall then have the right to enter the Premises for the purposes of correcting any such default, but any expenditure for the correction by the Licensor shall not be deemed to waive or release the default of the Licensee or the right of the Licensor to take any action as may be otherwise permissible hereunder in the case of any default;
- D. The Licensor may reenter the Premises immediately and remove the property and personnel of the Licensee and store the property in a public warehouse or at a place selected by the Licensor at the expense of the Licensee. On termination, the Licensor may recover from the Licensee all damages resulting from the breach, including the cost of reasonable attorney's fees; and
- E. After reentry, the Licensor may relet the premises or any part thereof for any term and may make alterations and repairs to the premises at the Licensee's expense.

#### **XIV. ACCESS TO PREMISES**

The Licensor shall have unlimited access to the demised premises during the duration of this Agreement. The Licensee shall permit the Licensor or its agents to enter the Premises at all reasonable hours to inspect the premises or make repairs that the Licensee may neglect or refuse to make in accordance with the provisions of this Agreement, and also to show the premises to prospective Licensees.

#### **XV. REPRESENTATIONS BY LICENSOR**

Licensee has had adequate time and opportunity to inspect the premises herein described. Having taken the time to inspect the same the Licensee accepts the buildings and improvements and any equipment as is. Except as agreed to

in writing and attached hereto, the Licensee agrees that no representations, statements, or warranties expressed or implied, have been made by or on behalf of the Licensor in respect thereto, and the Licensor shall in no event be liable for any latent defects, unless such defects make the Premises unable to be occupied.

#### **XVI. ASSIGNMENT, MORTGAGE, OR LEASE**

Neither the Licensee nor its successors or assigns shall assign, mortgage, pledge, or encumber this Agreement in whole or in part. Neither the Licensee nor its successors or assigns shall attempt to sublet the Premises, or permit the said premises to be used or occupied by others, nor shall this Agreement be assigned or transferred by operation of law without the prior consent in writing of the Licensor and Licensor may refuse such consent for any reason. If this Agreement is assigned or transferred, or if all or any part of the Premises is occupied by anyone other than the Licensee, without prior consent of the Licensor in writing, the Licensor may, after default by the Licensee collect use cost from the assignee, transferee, or occupant, and apply the net amount collected to the use cost reserved herein, but no such assignment, occupancy, or collection shall be deemed a waiver of any agreement or condition hereof. The Licensee shall continue to be liable hereunder in accordance with the terms and conditions of this Agreement and shall not be released from the performance of the terms and conditions hereof.

#### **XVII. SURRENDER OF PREMISES**

The Licensee shall, on the last day of the term of this Agreement, or on earlier termination and forfeiture of this Agreement, peaceably and quietly surrender and deliver the Premises to the Licensor, free of all encumbrances caused by Licensee or its agents, in good condition and repair, ordinary wear and tear excepted, and free of any hazardous materials, "hazardous substances," or "toxic substances" as those terms are defined in the Comprehensive Environmental Response, Compensation and Liability act of 1980, as amended; the Hazardous Materials transportation Act; the Resource Conservation and Recovery Act and/or the California Health and Safety Code, and in regulations promulgated pursuant thereto. Any property of the Licensee must be removed by the last day of the term (or sooner if an earlier termination has occurred), and if not removed at the termination or default, Licensee shall be liable for double the monthly use cost, prorated to a daily amount, for such time as Licensee's property remains on the premises, up to a maximum of thirty days after which the property shall be deemed abandoned and become the property of Licensor without any payment or offset thereof. In the alternative, Licensor may elect to remove such property from the Premises and store it, all at the risk and expense of Licensee. In any event, Licensor shall take no action with respect to Licensee's personal property which is in contravention of the laws of California.

#### **XVIII. CONDEMNATION**

If the whole of the Premises or such portion thereof, as will make the Premises unsuitable for the purpose herein used, is condemned for any public use or purpose by any legally constituted authority, then in either of such events, this Agreement shall cease from the time when possession is taken by such public authority and use cost shall be prorated to the date of surrender of possession. Such termination shall be without prejudice to the rights of either Licensor or Licensee to recover compensation from the condemning authority for any loss or damage for such condemnation. Neither the Licensor nor the Licensee shall have any rights in or to any award made to the other by the condemning authority. Licensee agrees to hold Licensor harmless and indemnify Licensor for any condemnation proceeding, whether formal or informal, inverse or otherwise.

#### **XIX. NOTICE**

Whenever this Agreement provides that notice, demand, request or other recommendation shall or may be given to either of the parties by the other, such notice, demand, request, or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless served by mailing such notice by certified mail, postage prepaid, return receipt requested, to the address listed in this Agreement or to any other address as either party may designate by notice given to the other by certified mail. Any such notice, demand, request, or other communication shall be deemed to have been given at the time it is duly deposited or registered at any United States Post Office or any branch office or three (3) days prior to actual receipt, whichever shall be later.

#### **XX. CONSTRUCTION AND INTERPRETATION**

In construing this Agreement, the following rules shall apply:

- A. Feminine or neuter pronouns shall be substituted for those masculine in form, and vice versa; and plural shall be substituted for singular and singular for plural in any place in which the text so requires.
- B. The covenants, terms, conditions, provisions, and undertakings in this Agreement or in any renewals thereof shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties hereto, as if they were in every case named and expressed; and wherever references is made to either of the parties hereto, it shall be held to include and apply also to the heirs, executors, administrators, successors, and assigns of such party, as if in each and every case so expressed.
- C. The specified remedies to which the Licensor may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the Licensor may be lawfully entitled in case of any breach or threatened by the Licensee by any provision or provisions of this Agreement.
- D. This Agreement contains the entire Agreement between the parties and shall not be modified, altered, amended, or changed, in any manner except by an instrument in writing executed by the parties. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be effected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- F. Should a legal action be commenced to interpret or enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs of suit.

#### **XXI. CORPORATE AUTHORITY**

- A. Any individual signing this Agreement on behalf of the Golden Gate Academy represents and warrants that he or she has the full authority to sign this Agreement on behalf of the Golden Gate Academy and the authority to bind the Golden Gate Academy to the terms of this Agreement as voted in the Golden Gate Academy Reorganization Committee meeting on May 11, 2021.
- B. Any individual signing this Agreement on behalf of the Northern California Conference of Seventh-day Adventists represents and warrants that he or she has the full authority to sign this Agreement and bind the corporation to the terms of this Agreement.
- C. Any individual signing this Agreement on behalf of the Licensee represents and warrants that he or she has the full authority to sign this Agreement on behalf of the Licensee and the authority to bind the Licensee to the terms of this Agreement.