



PACIFIC EDUCATION TECHNOLOGY INCORPORATED
(DBA **BONSAI**)
PO Box 146, Orinda, CA 94563
Phone: 925-494-2101 | Fax: 510-295-2409
contracts@bonsaiteam.org

CONTRACT ISSUE DATE: Nov 9, 2018 | CONTRACT # 7130-18-0

Master Services Agreement

1. **Purpose** - This Master Services Agreement (MSA) is entered into by PACIFIC EDUCATION TECHNOLOGY INCORPORATED (DBA **BONSAI**) and **EAST BAY INNOVATION ACADEMY** (CLIENT) whereby BONSAI will provide IT Services to CLIENT as specified and agreed upon in Individual Service Agreements (CONTRACTS). Any separately signed and executed CONTRACT entered into between CLIENT and BONSAI shall be fully incorporated within and controlled by this MSA, including the sections “Contract Renewals” and “Contract Termination” below.
2. **Term** - This Agreement shall commence on the **date of acceptance and signature by CLIENT below** and shall remain in effect as long as any CONTRACT Service Term remains in effect or any payments on such CONTRACTS remain outstanding.
3. **Services to be Provided** - CLIENT will engage BONSAI to provide services as defined and agreed upon in individual CONTRACTS. Each CONTRACT will have a services description that specifies the specific services provided and the accompanying service details, including any exclusions, and service terms.
4. **Confidentiality** - It is understood that during the course of this Agreement, BONSAI may be exposed to data and information, which are confidential and proprietary to CLIENT. All such data and information (hereinafter “CLIENT Confidential Information”) written or verbal, tangible or intangible, made available, disclosed, or otherwise made known to BONSAI and its employees, partners and subcontractors as a result of services under this Agreement shall be considered confidential and shall remain the sole property of CLIENT. CLIENT may be exposed to data and information, which are confidential and proprietary to BONSAI. Each party agrees that it will not reveal, publish or otherwise disclose Confidential Information to any third party without the prior written consent of the disclosing party, provided that the foregoing obligations shall not apply to Confidential Information which:
 - a. Is or becomes generally available to the public other than as a result of a disclosure by the receiving party;
 - b. Becomes available to the receiving party on a non-confidential basis from a source, which is not prohibited from disclosing such information by a legal, contractual or fiduciary obligation to the disclosing party;
 - c. The receiving party develops independently of any disclosure by the disclosing party;
 - d. Was in the receiving party’s possession or known to the receiving party prior to its receipt from the disclosing party; or
 - e. Is required by law to be disclosed.

This obligation of confidentiality and non-disclosure shall remain in effect for a period of three years after the termination of this Agreement.

5. **Independent Contractor Relationship** - For the purposes of this Agreement, BONSAI is an independent contractor/service provider and nothing contained in this Agreement shall be construed to place them in the relationship of partners, principal and agent, or employer and employee. BONSAI agrees that it shall have no

power or right to bind or obligate CLIENT, nor shall BONSAI hold itself out as having such authority. CLIENT shall not represent BONSAI as officials, management, or staff of the former; however, CLIENT may represent BONSAI as consultants and advisors.

6. **Performance of Services** - In carrying out its responsibilities under this Agreement, BONSAI agrees that these services shall be conducted in compliance with, when appropriate, any applicable protocol and specifications and with all applicable laws, rules, and regulations.
7. **Communication and Problem Resolution** - It is understood by both parties that over the course of the service term misunderstandings, problems, and even mistakes may arise. Both parties agree to escalate and notify the other party of any such problems or concerns directly via email, within 15 days, and facilitate and work in good faith to find resolution expeditiously by negotiation between executives who have authority to settle any such problems. Both parties further agree to treat any such matters with the greatest sense of urgency, transparency, and attention.
8. **Contract Renewals** - A CONTRACT length or "Term" for any CONTRACT is specified within the Terms and Conditions on each CONTRACT. After the initial term, the CONTRACT will automatically renew, for a 1 year term, annually, on the CONTRACT "Start Date", as included on the CONTRACT.
9. **Contract Termination** - There is no early termination option for a CONTRACT during the CONTRACT service term, or any CONTRACT renewal service term, outside of the *Cause for Termination Exception* as described in Section 10. However, after the initial service term, and including any renewal service term(s), CLIENT may choose not to extend the CONTRACT beyond the current year term, by (1) notifying BONSAI prior to 90 days from the next annual renewal date, and (2) provided the CLIENT has no outstanding payments due to BONSAI at time of notification. After such notification, the CONTRACT term will end at the next renewal date and the CONTRACT will have been "terminated".
10. **Cause for Termination Exception** -
 - a. CLIENT may terminate a CONTRACT for "Cause" at the end of the current year of service, without further payment liability, and with email notification of CLIENT'S intention to terminate, should any of the following occur:
 - i. CLIENT has requested BONSAI change CLIENT's onsite support or training personnel and BONSAI has not made such change within 90 days of notification.
 - ii. CLIENT has notified BONSAI that BONSAI has failed to provide the services described directly below in this section, and BONSAI fails to resolve the service problem(s) within 90 days of notification. Such services include:
 1. Completion of onsite support and EdTech training visits
 2. Completion of client management and technology planning meetings
 - b. BONSAI may terminate a CONTRACT for "Cause" if payment for any CONTRACT is not received by BONSAI within (90) days of the due date of any such invoice.
11. **MSA Termination** - This Master Services Agreement (MSA) may be terminated by BONSAI or by CLIENT, with 30 days notice, and after all CONTRACTS have been terminated AND if all payments have been made to BONSAI for all CONTRACTS.
12. **Limitation of Liability** - Neither BONSAI or their respective directors, officers, employees or agents shall have any liability whatsoever under this Agreement or otherwise except with respect to damages directly attributable solely to BONSAI's gross negligence or intentional misconduct. Further, CLIENT agrees that BONSAI's liability for acts and omissions on the part of BONSAI, which result in damages to CLIENT'S property, shall be limited to the replacement of any defective service or, at BONSAI's option, refund of the purchase price, whichever is less. In addition, in no event shall the collective, aggregate liability of BONSAI and its respective directors, officers,

employees and agents under this Agreement exceed the amount of compensation actually received by BONSAI from CLIENT pursuant to the CONTRACT from which such liability arose.

13. Indemnification - The parties shall indemnify, defend and hold harmless the other party, its affiliates and its and their respective directors, officers, employees and agents (each, an "Indemnified Party") from and against any and all losses, claims, actions, damages, liabilities, costs and expenses, including reasonable attorney's fees and court costs, (collectively, "Losses"), relating to or arising from or in connection with this Agreement (including, without limitation, any Losses arising from or in connection with any study, test, strategy, product or potential product to which this Agreement relates) or any litigation, investigation or other proceeding relating to any of the foregoing, except to the extent such Losses are determined to have resulted from the negligence or intentional misconduct of the Indemnified Party seeking indemnity hereunder.

14. Indemnification Procedure - The Indemnified Party shall: (a) give other party notice of any such claim or lawsuit (including a copy thereof served) within fifteen (15) days after such claim or lawsuit was served upon BONSAI; (b) fully cooperate with the other party and its legal representatives in the investigation of any matter which is the subject of indemnification; and (c) not unreasonably withhold its approval of the settlement of any such claim, liability, or action by the party which is the subject of this Indemnification provision.

15. Mediation in Advance of Arbitration

- a. The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement, that are not fully resolved through internal negotiation within 90 days, shall be submitted for mediation.
- b. Either party may commence mediation by providing to the other party a written request for mediation, setting forth the subject of the dispute and the relief requested.
- c. The parties will cooperate with one another in selecting a mediator from a panel of neutrals in the state of California and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs.
- d. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
- e. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following 45 days from the date of filing the written request for mediation, whichever occurs first ("Earliest Initiation Date"). The mediation may continue after the commencement of arbitration if the parties so desire.
- f. At no time prior to the Earliest Initiation Date shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of each Paragraph above.
- g. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until 15 days after the Earliest Initiation Date. The parties will take such action, if any, required to effectuate such tolling.

16. Force Majeure - In the event BONSAI shall be delayed or hindered in or prevented from the performance of any act required hereunder by reasons of strike, lockouts, labor troubles, inability to procure materials, failure of power or restrictive government or judicial orders or decrees, riots, insurrection, war, Acts of God, inclement weather, or any other reason or cause beyond BONSAI's reasonable control, the performance of such act shall be excused for the period of such delay.

17. **Non-solicitation** - During the entire contract period, and for two (2) years after final contract expiration, CLIENT will not, directly or indirectly solicit, hire, or attempt to induce separate or individual services from any employee or affiliate of BONSAI without prior written consent of BONSAI.
18. **Fee Schedule** - CLIENT will be invoiced as delineated in individual CONTRACTS and Payment shall be made by CLIENT by due date of invoice. If payment is not received by BONSAI within (60) days of the due date of any invoice, services to CLIENT may be suspended, at BONSAI's discretion, and the outstanding balances due will accrue interest at 2% per month.

Notices - Any notice required or permitted to be given hereunder by either party hereunder shall be in writing and shall be deemed given on the date received if delivered to the following addresses:

If to BONSAI:	Contracts Department Bonsai 129 E Street, Suite D3, Davis, CA 95616 contracts@bonsaiteam.org
If to CLIENT:	Michelle Cho East Bay Innovation Academy 3800 Mountain Blvd, Oakland CA 94619

20. **Governing Law** - This Agreement shall be construed, governed, interpreted, and applied in accordance with the laws of the County of Yolo, in the State of California. If any one or more provisions of this Agreement shall be found to be illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
21. **Entire Agreement** - This Agreement contains the entire understandings of the parties with respect to the subject matter herein, and supersedes all previous Agreements (oral and written), negotiations, and discussions. The parties, from time to time during the term of this Agreement, may modify any of the provisions hereof only by an instrument in writing duly executed by the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto through their duly authorized officers on the date(s) set forth below.

ACKNOWLEDGED, ACCEPTED, AND AGREED TO:

CLIENT Signature:

Printed Name:

Title:

Date:

BONSAI Signature:

Printed Name:

Title:

Date:
