



Memorandum of Understanding

Between
R.T. Fisher Educational Enterprises, Inc.
and
Making Waves Academy

for the term of:
July 1, 2021 – June 30, 2022

This Independent Contractor Services Agreement (“Agreement”) is made by and between and R.T. Fisher Educational Enterprises, Inc. (“RTF”), a California corporation and Making Waves Academy (“MWA”) a public California educational institution.

RECITALS

A. RTF is in the business of, and has considerable expertise in providing educational support services programs and activities. MWA desires to engage RTF, and RTF desires to be engaged, to provide instructional and capacity building support services to the extent and on the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereby agree as follows:

AGREEMENT

- 1. Term of Agreement.** The term of this Agreement shall commence as of July 1, 2021 (“Effective Date”), and continue until June 30, 2022 (“Term”), unless earlier terminated as provided in **Section 10**.
- 2. Project Management and Responsibilities.** The specific services to be provided by RTF and the respective roles and responsibilities of each of the Parties, commencing on the Effective Date, are specified in Attachments **Exhibits A-D**.
- 3. Compensation; Payment Terms.**
 - (a)** As compensation to RTF for the services performed under this Agreement, MWA shall pay RTF a total of \$400,183.00 as detailed in **Attachment Exhibit A**. For the purpose of this Section 4(a), “Administrative Costs” shall mean any cost, direct or indirect, that supports the implementation of the contracted services. Direct costs typically include salary costs related to preparing meeting materials and monitoring activities. Indirect costs typically include expenses for general administration of the services (personnel, payroll, accounting, procurement, data processing, etc.).



- (b) Beginning July 1, 2021 and the first of every month thereafter until June 1, 2022, RTF shall provide invoices addressed to Making Waves Academy in the amount of \$33,348.50.
- (c) Each invoice shall include the following information:
 - (i) Days/dates of service
 - (ii) Description of services
 - (iii) Any additional data required by MWA

MWA shall pay RTF all undisputed amounts due under the invoice within thirty (30) business days of its receipt of each such invoice.

4. Personnel; Fingerprinting.

- (a) All personnel performing services on behalf of RTF shall be compensated directly by RTF as RTF's employees or subcontractors, as applicable. All personnel performing responsibilities on behalf of MWA shall be compensated directly by MWA as MWA's employees or subcontractors, as applicable.
- (b) By execution of this Agreement, RTF and MWA acknowledge that California Education Code Section 45125.1 ("Section 45125.1") applies to the outlined consulting and development. Section 45125.1 requires that employees of entities providing such services to school districts must be fingerprinted by the California Department of Justice for a criminal records check.
- (c) RTF expressly acknowledges and agrees that: (i) RTF and all of RTF's employees and contractors working with students must submit fingerprints in a manner authorized by the Department of Justice, together with the requisite fees as set forth in Section 45125.1; (ii) RTF shall not permit any employee or contractor to come in contact with students until the Department of Justice had ascertained that the employee or contractor has not been convicted of a serious or violent felony; (iii) RTF shall certify in writing to MWA that none of its employees or contractors who may come in contact with students have been convicted of a serious or violent felony; and (iv) RTF shall provide MWA a list of names of its employees who may come in contact with students. RTF shall fulfill these requirements at its own expense.
- (d) RTF expressly acknowledges and agrees that all staff or volunteers who may come in direct contact with students participating in the Program shall meet all health screening requirements of MWA. RTF shall provide proof of health screening to the MWA before permitting supervision by any staff or volunteer.

5. Insurance. RTF shall maintain at its own cost and expense policies of comprehensive liability insurance and property damage insurance coverage as set forth below. The Parties agree that RTF and its officers, agents, employees and representatives shall be



specifically named in any and all such policies of insurance as additional named insureds. Any and all policies of insurance maintained by MWA pursuant to this Section shall be deemed primary to any potentially applicable policy or policies of insurance maintained by RTF and/or its officers, agents, employees and representatives. The policy may not contain an exclusion for coverage of claims arising from claims for sexual molestation or abuse. In the event that RTF's policy should have an exclusion for sexual molestation or abuse claims, then RTF shall be required to procure a supplemental policy providing such coverage

(i) Worker's Compensation.

(ii) General Liability and Property Insurance: Comprehensive general liability coverage shall be in the amount of not less than five (5) million dollars – occurrence based. Property coverage shall be for replacement value.

(iii) RTF may obtain indemnity coverage for errors and omissions for its directors and officers and any other insurance the RTF deems appropriate or determines is required in accordance with applicable law.

RTF shall notify MWA within five (5) days of any claim or lawsuit filed against RTF that relates to the operation of services to RTF where MWA provides services pursuant to RTF.

6. Indemnification; Limitation of Liability; Disclaimer of Warranties.

(a) MWA hereby agrees to defend, indemnify and hold harmless RTF and RTF and its subsidiaries, affiliates, officers, directors, contractors, agents and employees (collectively, MWA and MWA Representatives") from and against any and all suits, claims, liabilities, demands or causes of action of any third party alleging damages, losses and expenses, including reasonable attorney's fees and costs of suit, arising from (i) death or injury to person or property as a result of any negligent or intentional act or omission of MWA or any of MWA's subsidiaries, affiliates, officers, directors, contractors, agents and employees ("MWA Representatives"); or (ii) any material breach by MWA of any its obligations under this Agreement.

(b) RTF hereby agrees to defend, indemnify and hold harmless MWA and the MWA and its board, officers, agents, authorizer, employees and volunteers from and against any and all suits, claims, liabilities, demands or causes of action of any third party alleging damages, losses and expenses, including reasonable attorney's fees and costs of suit, arising from (i) death or injury to person or property as a result of any negligent or intentional act or omission of RTF or any of RTF Representatives; or (ii) any material breach by RTF of any its obligations under this Agreement.

(c) EXCEPT WITH RESPECT TO THE PARTIES' INDEMNITY OBLIGATIONS AND BREACHES OF SECTION 9, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR



CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST GOODWILL, WORK STOPPAGE OR IMPAIRMENT OR LOSS OF OTHER GOODS, SOFTWARE OR DATA, AND WHETHER ARISING OUT OF ANY BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN.

(d) EXCEPT AS EXPRESSLY PROVIDED HEREIN, RTF'S SERVICES ARE PERFORMED AND THE MATERIALS DEVELOPED AND/OR PROVIDED ARE PROVIDED ON AN "AS IS" BASIS, AND TO THE FULLEST EXTENT PERMITTED BY LAW, MWA EXCLUDES ALL OTHER EXPRESS AND IMPLIED TERMS, WARRANTIES OR REPRESENTATIONS ARISING BY LAW OR OTHERWISE INCLUDING WITHOUT LIMITATION FITNESS FOR A PARTICULAR PURPOSE.

7. Ownership of Intellectual Property. The Parties acknowledge and agree that in the performance of Services hereunder, RTF may utilize certain materials that are proprietary to RTF, including without limitation RTF's proprietary materials that comprise RTF™. Accordingly, any rights in and to any tangible or intangible property provided by RTF in connection with the contracted services, including RTF™ and other intellectual property such as copyrights, trade secrets, patents and know-how previously developed or acquired by RTF and/or developed by or on behalf of RTF during the Term (whether in connection with the Project or otherwise) (collectively, "RTF Materials"), shall remain and shall at all times be the property of RTF.

8. Confidentiality. MWA acknowledges and agrees that the RTF Materials (including but not limited to the materials that comprise The Quad™), as well as any other oral or written information disclosed by RTF, that are not generally known outside of RTF or otherwise confer on RTF a competitive advantage, including, without limitation, information relating to RTF's operations, finances, services, marketing plans or personnel, is confidential information of RTF (collectively "RTF Confidential Information"). MWA agrees to receive and maintain all RTF Confidential Information in the strictest confidence for the purpose for which it is provided and shall not use Confidential Information for its own benefit or disclose it or otherwise make it available in whole or in part to third parties without the prior written consent of RTF. MWA agrees to limit the disclosure of RTF Confidential Information to only those employees and students of MWA who need the RTF Confidential Information in connection with the implementation of the contracted services and to advise all employees of RTF's rights in the RTF Confidential Information. Nothing in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any RTF Confidential Information, patents, trademarks, copyrights or other intellectual property rights of RTF except as necessary for the limited purposes of the implementation of the contracted services.



9. Termination. Prior to the expiration of the Term, RTF may at any time terminate this Agreement, for any reason in RTF's sole discretion, upon written notice to MWA, and MWA may at any time terminate this Agreement for any reason in MWA's sole discretion, upon written notice to RTF. In the event of any such early termination, MWA may secure the required services from another third party or otherwise in any manner it deems appropriate, and MWA shall compensate RTF for all services satisfactorily performed through the date of such termination in accordance with the compensation provisions set forth in **Section 4**. Upon termination of this Agreement, RTF promptly shall deliver or cause to be delivered to MWA all previously undistributed copies of the MWA Materials, together with all copies of any documents, data and materials of any sort which were furnished by MWA to RTF. RTF shall not have the right to continue use of the MWA Materials following the termination of this Agreement for any reason.

10. Notices. All notices, requests, and other communications under this Agreement shall be in writing and mailed to the proper addresses as follows:

If to MWA:	Alton B. Nelson CEO Making Waves Academy
If to RTF:	R.T. Fisher Educational Enterprises, Inc. 22568 Mission Blvd. Ste 517 Hayward, CA 94541

11. Survival. The terms of **Sections 4 and 7 through 17** hereof shall survive expiration or earlier termination of this Agreement.

12. Assignment. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.

13. Independent Contractor. RTF is an independent contractor and is responsible for paying all RTF's taxes and insurance, including the insurance required pursuant to **Section 6**.

14. No Agency or Partnership. Nothing in this Agreement shall constitute the appointment of a Party as an agent or legal representative of the other Party for any purpose whatsoever. This Agreement shall not be deemed to create any relationship of agency, partnership or joint venture between the Parties, and no Party shall make any such representation to any third party.

15. Entire Agreement. This Agreement constitutes the only agreement, and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof. All Exhibits hereto are a material part of this



Agreement and are incorporated by reference. This Agreement, including any Exhibits hereto, may not be amended or modified, except in a writing signed by all Parties to this Agreement.

16. Miscellaneous. In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement, or the alleged breach thereof, the prevailing Party shall, in addition to any other relief, be entitled to recover its reasonable attorneys' fees and costs of sustaining its position. Each provision of this Agreement shall be separately enforceable, and the invalidity of one provision shall not affect the validity or enforceability of any other provision. This Agreement shall be interpreted and construed in accordance with the laws of the State of California applicable to contracts to be performed entirely within such State. Time is of the essence of this Agreement and of each and every provision hereof. The failure of any Party to exercise any of its rights under this Agreement shall not be deemed a waiver of such rights.

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

MWA:

Making Waves Academy, a public California educational entity

By: _____

Printed Name:

Title:

RTF:

R.T. FISHER EDUCATIONAL ENTERPRISES, INC., a
California corporation

By:

Name: Robyn Fisher

Title: President & CEO, RTFisher Educational Enterprises, Inc.