

Program Agreement

This Program Agreement (this "Agreement") is between The Achievement Network, LTD., a Massachusetts nonprofit corporation with a principal place of business at 177 Huntington Ave, Suite 1703, PMB 74520, Boston, Massachusetts 02115-3153 ("ANet") and the Partner listed below ("Partner"). Each of ANet and Partner may be referred to herein individually as a "Party" or collectively as the "Parties." This Agreement includes, collectively, (1) this Cover Sheet, (2) the attached Program Description Page, (3) the attached Partner Data Page, and (4) the attached Standard Terms and Conditions.

Partner: Camino Nuevo Charter Academy (CNCA)
Address: 3435 W. Temple Street, Los Angeles, CA 90026
Phone: (213) 417-3400
Invoicing Contact (Name/Email): Rachel Hazlehurst/rachel.hazlehurst@pueblonuevo.org

Effective Date: The earlier of (a) the date this Agreement is last signed below, and (b) the provision of services by ANet to Partner hereunder.

Program Dates: July 1, 2022 - June 30, 2023

Fees and Payment Schedule:

School Program Fee:	\$117,000.00
System Program Fee:	\$33,000.00
Total Fees:	\$150,000.00
Total Payment:	\$150,000.00

Payment Information

50% of fees due by August 30, 2022	\$75,000.00
50% of fees due by September 30, 2022	\$75,000.00



Each of the Parties has caused this Agreement to be executed on its behalf by its duly authorized representatives as of the Effective Date and agrees that an electronic signature of a duly authorized representative constitutes a valid signature for such Party.

PARTNER

DocuSigned by:

By: Rachel Hazlehurst

0704B88EC84C4CC...

Print Name: Rachel Hazlehurst

Title: VP of Curriculum and Instruction

Date: 8/2/2022

THE ACHIEVEMENT NETWORK, LTD.

DocuSigned by:

By: Kathryn Walton

BE4BE18A61A542B

Print Name: Kathryn Walton

Title: Executive Director, Partnerships

Date: 7/27/2022

Program Agreement

Program Description

Program Description: ANet will provide:

1. ONLINE PLATFORM (TOOLS & ASSESSMENTS)

Access for every teacher and administrator to ANet's proprietary online platform, myANet, containing

- a. RESOURCES
 - i. Planning – Resources, protocols and templates to facilitate planning, including the ANet Schedule of Assessed Standards, Standards and Objectives Guides aligned to rigorous learning standards, and example lesson or instructional plans
 - ii. Professional Learning materials - sessions, videos, and virtual learning modules that provide guidance on planning from texts and standards and teaching and learning cycle practices
 - iii. Platform materials - screencasts and guides to using features found on myANet
- b. ASSESSMENT MATERIALS
 - i. Quiz Tool access – Re-assessment tool for teachers
- c. REPORTING AND ANALYSIS
 - i. Online Reports of Quiz Tool results (the “Reports”), which include:
 1. Partner student summaries by class and student level item analysis by class

2. TRAINING AND COACHING

- a. Partner specific coaching/training sessions (as agreed to between ANet's coach and Partner)
- b. The number of coaching interactions provided is based upon Partner's purchased service model
- c. Coaching interaction topics are focused by the Partner's instructional priorities and practice level and vary depending on Partner needs
- d. The focus of coaching interactions may include but are not limited to any of the following:
 - i. Beginning of Year meetings (late spring/early summer or late summer: set focus and priorities for the year; map out overall approach for coaching interactions)
 - ii. Partnership Kick-Off Meeting: orient teachers and leaders around partnership, instructional purpose of assessments (if purchased by Partner), and tools
 - iii. Classroom observations with school leadership
 - iv. Planning Support with leaders/Instructional Leadership Team (based on need)
 - v. Data Meeting Support with leaders/ILT (based on need)
 - vi. Observations of adapted instruction with school leadership
 - vii. Mid-Year and End of Year Meetings to monitor and review progress

3. SYSTEM SUPPORT

- a. Instructional Materials Implementation
 - i. ANet shall provide up to 20 interactions, not to exceed 40 total hours in duration. ANet will engage with Camino Nuevo leadership to advance progress in a set of key areas of focus, which will include a subset of the following:
 1. Create coherence across centralized teams (curriculum team, professional development team, principal managers, etc.) by defining roles, responsibilities, and interdependencies; creating regular rhythms for collaboration and natural accountability that build trust; and other methods to de-silo centralized teams in the implementation of instructional materials.
 2. Ensure that school leaders, principal managers, and other system leaders have adequate time, resources, and a clear understanding of other aligned priorities to lead strong, visible implementation of high quality materials
 3. Regularly collect information about perception, coherence, trust and support for the implementation of instructional materials from students, families, classroom leaders

and school leaders, and can demonstrate the ways the resulting feedback shapes policy and strategy

4. PARTNER RESPONSIBILITIES

- a. Partner will work with its information technology team to ensure that emails from 'achievementnetwork.org' are not blocked or filtered as spam.
- b. Partner will provide to ANet within six (6) weeks of the beginning of the applicable school year teacher information for all ANet-involved teachers, including (1) name, (2) grade and subject taught, and (3) email address, updated as necessary to reflect changes in the staffing structure.
- c. Partner will provide to ANet by the end of the applicable calendar year school-level targets for state assessments.

5. PARTICIPATING SCHOOLS

School	Service Model	Program Fee
CNCA Burlington Campus	Sustaining K-8 without assessments	\$24,000.00
CNCA Castellanos and Eisner Campuses	Full K-8 without assessments	\$31,000.00
CNCA Kayne Siart Campus	Full K-8 without assessments	\$31,000.00
CNCA Sandra Cisneros Campus	Full K-8 without assessments	\$31,000.00
TOTAL		\$117,000.00

Note: ANet provides a hybrid model of service delivery with up to 50% of school-level coaching interactions being delivered in-person at Partner's location and 50% being delivered virtually. For system-level interactions, up to 15% of interactions are to be delivered in-person at Partner's location and the remaining are to be delivered virtually. Note that this model is subject to change in light of the current and continuing pandemic. ANet reserves the right to modify this model and provide more, and possibly all, coaching services virtually in order to protect the health and safety of its staff and the Partner's staff. ANet will take into account CDC guidance, state and local regulations and guidance, the Partner's health and safety COVID-19 response plan, and its and the Partner's internal policies. During all on-site work, ANet staff will be provided with the requisite Personal Protective Equipment prior to commencing on-site work and will be instructed to follow all applicable CDC and Partner health and safety procedures. ANet reserves the right to discontinue on-site work at any time and provide such services to Partner virtually if ANet determines in good faith that cessation of on-site visits is necessary to protect the health and safety of its personnel. If Partner chooses to receive more than 50% of its coaching services in person (and as long as and to the extent permissible under applicable health and safety rules and regulations, and ANet's ability to meet this request), Partner will pay the additional on-site support fee noted on the Cover Sheet.



Program Agreement

Partner Data Page

Partner Data:

Partner will provide the following information:

1. For the year prior to the Program Start Date, and all years during the Program (Optional):

a. *To be provided when available:*

- i. State assessment outcomes (1) by student, including student demographic information, scaled scores, and proficiency levels, and (2) by grade, including number of students at each proficiency band and total number of students tested.

b. *To be provided by the end of the applicable calendar year, or when available:*

- i. School-level demographics, including (1) total enrollment, (2) percentage of students in each race/ethnic category, (3) percentage ELL/FEP/LEP/NEP, (4) percentage special education/students with disabilities, (5) percentage FRL, and (6) Title I status.

2. For all years during the Program:

a. *To be provided within six (6) weeks of the beginning of the applicable school year:*

- i. Required Student information, including (1) first name, (2) last name, (3) birthdate or SASID, (4) grade. This information should be updated regularly within the online platform to reflect changes in the student body.
- ii. Required Enrollment information, including (1) class name, (2) subject, (3) teacher first name, (4) teacher last name, (5) teacher email for access to myANet
- iii. Optional Student Information, including (1) race/ethnicity, (2) FRL, ELL/FEP/LEP/NEP, special education status



Program Agreement

BACKGROUND

ANet offers a program consisting of educational services and materials, including an online proprietary platform (the “Platform”), curriculum and teaching resources, assessment materials, assessment analysis, training and coaching and network events, as described on the Program Description Page (collectively, the “Program”). Partner desires to use the Program in accordance with the terms and conditions set forth herein.

1. THE PROGRAM

1.1 Program: ANet agrees to implement the Program for Partner during the Term. Partner agrees to commit the resources and personnel necessary to fully participate in the Program.

1.2 Use Rights: Subject to the terms of this Agreement and effective as of the Program Start Date (as defined on the Cover Sheet), ANet hereby grants to Partner the following use rights, during the Term:

(a) *Access to the Platform*: a non-exclusive, non-transferable right to access and use the Platform, solely for Partner’s internal education-related purposes in connection with the implementation of the Program.

(b) *Assessment Materials*: a non-exclusive, non-transferable license to use, reproduce and distribute solely to Permitted Users (as defined below) the Assessment Materials (as defined on the Program Description Page) provided to Partner during the Program, solely for Partner’s internal education-related purposes in connection with the implementation of the Program.

(c) *Resources*: a non-exclusive, non-transferable license to use and reproduce in hard copy form the Resources (as defined on the Program Description Page) provided to Partner during the implementation of the Program, solely for Partner’s internal, informational purposes related to Partner’s educational mission.

(d) *Other Downloadable Content*: with respect to such additional content and materials that are owned by or licensed to ANet and made available for download by Partner through proper use of the Platform (collectively, “Additional Content”, and together with the Assessment Materials and Resources, “ANet Content”), a non-exclusive,

Standard Terms and Conditions

non-transferable license to download a copy of any portion of such Additional Content, and use such Additional Content solely for Partner’s internal education-related purposes in connection with the implementation of the Program.

1.3 Permitted Users. “Permitted Users” means Partner’s personnel who have a professional need to know or need to access the Platform and ANet Content in connection with the implementation of the Program. ANet will either issue to Partner or authorize a Partner administrator to create and issue to each Permitted User, a user identification number and/or password for access to and use of the Platform. Partner and its Permitted Users are responsible for maintaining the confidentiality of all user identification numbers and/or passwords and for ensuring that each user identification number and/or password is used only by the Permitted User to which it was issued. Partner will be solely responsible for the Permitted Users’ compliance with this Agreement, and for any and all activities that occur under Partner’s account. Partner will restrict Permitted Users from sharing passwords. Partner will immediately notify ANet of any unauthorized use of Partner’s account or any user identification number and/or password, or any other breach of security known to Partner. Partner will ensure that it has obtained any and all necessary and appropriate consents from students and parents to (a) provide student personally identifying information to ANet, and (b) establish student accounts and student access to the Platform. ANet will have no liability for any liability arising from Partner’s failure to comply with the terms set forth in this Section.

1.4 Restrictions. The rights and licenses set forth in Section 1.2 are granted subject to the following restrictions:

(a) The Platform and ANet Content may be used or accessed only by Permitted Users;

(b) Results of the Assessment Materials may not be used for the purposes of evaluating or determining the employment status of personnel of Partner;

(c) Partner will not, directly or indirectly, and Partner will not encourage or assist, or knowingly permit any User to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the object code or source code of the Platform; (ii) modify, translate, or create derivative works based on any element of the Program or the Platform; (iii)



license, sublicense, sell, resell, rent, lease, distribute, assign, or transfer its rights to use the Platform or any elements of the Program, or otherwise commercially exploit or make available to any third party any portion of the Platform or Program; (iv) use the Program for timesharing purposes, to process data on behalf of third parties, or otherwise for the benefit of any person or entity other than for the benefit of Partner and Permitted Users at Partner's facility; (v) remove any proprietary notices from any materials furnished or made available to Partner; (vi) publish any evaluation of the Platform without ANet's prior written consent; (vii) use the Platform for any purpose other than its intended purpose; (viii) use or access the Platform from or for the benefit of any facility or location other than the Partner's primary facility; (ix) circumvent or otherwise interfere with any user authentication or security of the Platform, or disrupt the integrity or performance of the Platform; (x) attempt to gain unauthorized access to the Platform or its related systems or networks or any ANet Content; or (xi) use the Platform to store or transmit infringing, libelous, or otherwise unlawful or tortious content or material, or to store or transmit content or material in violation of any rights of any third party.

1.5 Ownership; Reservation of Rights. Subject only to the rights expressly granted to Partner under this Agreement, as between ANet and Partner, all rights, title and interest in and to the Platform and the ANet Content, and any other ANet materials furnished or made available hereunder, and all modifications and enhancements thereof, including all copyright rights, patent rights and other intellectual property rights in each of the foregoing, will remain with and belong exclusively to ANet or ANet's licensors and providers, as applicable.

1.6 Feedback. The Parties acknowledge that Partner or Permitted Users may, from time to time, provide to ANet ideas, feedback and suggestions about the Platform (collectively, "Feedback"). ANet and its licensors and providers will be free to use such Feedback as they see fit without obligation of any kind to Partner.

2. PARTNER MATERIALS; PARTNER DATA; PARTNER GENERATED CONTENT

2.1 Partner Materials and Partner Data. "Partner Materials" means any and all information or materials provided to ANet by Partner in connection with the implementation of the Program, including, without limitation, the Partner Data (as defined on the Partner Data Page) and student performance results on the scheduled interim assessments.

2.2 Provision of Partner Materials. Partner agrees to provide ANet with all Partner Materials necessary or desirable for ANet to implement the Program, including without limitation the Partner Data. Such Partner Materials will be provided promptly when requested or otherwise agreed by the Parties, provided that the Partner Data will be provided in accordance with the timing set forth on the Partner Data Page. Partner acknowledges that timely provision of such Partner Materials is essential to the success of the Program. Partner represents to ANet that it has all necessary rights to provide such Partner Materials (including the Partner Data) to ANet.

2.3 Access to Partner Data Through State and Other Agencies. Partner agrees to allow relevant agencies, including but not limited to the state education agency or local education agency to directly release registration, demographic and performance data for Partner to ANet.

2.4 License to Partner Materials. Subject to the terms and conditions of this Agreement, Partner hereby grants to ANet a worldwide, non-exclusive, irrevocable, assignable, royalty-free, perpetual license to use, reproduce, distribute, display and create derivative works of Partner Materials in connection with the implementation of the Program.

2.5 Reports. Partner acknowledges and agrees that Partner Data, and the student performance on the scheduled interim assessments at the grade, school and organizational level, may be disclosed, published, distributed and otherwise used by ANet in Reports (as defined on the Program Description Page) provided to Partner. Such Reports will comply at all times with Section 5 of this Agreement, as well as with the Family Educational Rights and Privacy Act of 1974 ("FERPA").

2.6 Aggregated Data. During or following the Term, ANet and its subcontractors will have the right to disclose, distribute and use any Partner Materials and any other information input into the Platform ("Input Data"), as part of an aggregate set of data that does not identify any such data as being related to any specific Partner student ("Aggregated Data"). Partner acknowledges that ANet and its subcontractors may (a) compile Aggregated Data based on Partner Materials and Input Data, and (b) distribute such Aggregated Data to third parties.

2.7 Use of Partner Materials. Except as otherwise set forth in this Agreement, ANet will not use, disclose or distribute to third parties Partner Materials other than (a) as part of Aggregated Data, (b) to its subcontractors who require such information in connection with the implementation of the Program,



(c) to third parties for research and evaluation purposes, or (d) for its own internal professional development or evaluative purposes to help improve ANet products and services. For clarity, the results of any research described in the foregoing clause (c) may be disclosed, published, distributed and otherwise used by ANet without restriction, provided that Partner Materials is not revealed in such disclosure, publication, distribution or use other than as part of Aggregated Data. Partner hereby grants to ANet and its subcontractors a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Partner Materials and Input Data in connection with the uses described in the foregoing clauses (a)-(d).

2.8 Partner Generated Content.

(a) Partner is solely responsible for all “Partner Generated Content” (defined below) and Users use of the Partner Generated Content. ANet does not guarantee the accuracy, integrity or quality of Partner Generated Content. ANet obtains no ownership rights to Partner Generated Content. By using ANet’s services, Partner approves of ANet’s right to access, retain, use and disclose Partner Content solely for the purpose of providing Services hereunder.

(b) Partner represents and warrants that it has all necessary rights and authority in the Partner Generated Content to permit ANet to display such content on the Platform without infringing the rights of any copyright owners, violating any applicable laws or violating the terms of any license or agreement to which it is bound.

(c) During the Term, Partner permits ANet the right to publicly perform, publicly display and digitally perform the Partner Generated Content only on or in conjunction with the use and hosting of the Platform in accordance with the terms of this Agreement. Partner grants no rights other than expressly granted herein, and ANet will not exceed the scope of its license hereunder.

(d) “Partner Generated Content” means any Quiz Tool items or other third party content, tools or resources imported or posted by Partner to the Platform.

2.9 Student Records. With respect to any access by ANet to any “Education Records” (as such term is defined in FERPA held by Partner under or in connection with this Agreement, ANet will be acting as a legal agent and will be deemed to be a “school official” (as such term is defined under FERPA) of Partner. As

between the Parties, any Education Records protected by FERPA submitted to ANet by Partner in connection with this Agreement will be deemed the Confidential Information of Partner subject to Section 5. ANet agrees not to disclose any FERPA protected Education Record to any third party except as permitted by FERPA or as authorized or permitted by Partner or this Agreement. ANet will implement or cause to be implemented technical and administrative security measures to protect the confidentiality, integrity and security of the Education Records as further detailed in Section 2.10 below.

2.10 Data Security. ANet certifies that it and, after reasonable investigation, diligence and inquiry, its vendors, consultants, contractors and other parties engaged by ANet in contact with Partner Materials have established, implemented, and will maintain comprehensive information security programs detailing administrative, technical, and physical safeguards designed to ensure the security and confidentiality of Partner Materials, protect against anticipated threats or hazards to the security and integrity of Partner Materials, protect against unauthorized access to or use of Partner Materials, and provide for the proper disposal of Partner Materials, all as required by applicable law and this Agreement. During the Term, Partner reserves the right to assess ANet’s controls and security practices to ensure compliance with these requirements one time per calendar year, upon 14 business days’ advance notice to ANet and during ANet’s normal business hours. All costs incurred by Partner for such assessments will be at Partner’s expense.

3. **FEES; PAYMENT TERMS**

3.1 Fees; Payment Terms. All payments for fees as set forth on the Cover Sheet will be made by Partner or, if applicable and as set forth on the Cover Sheet, by a sponsoring entity on behalf of Partner, to ANet in accordance with the payment schedule set forth on the Cover Sheet. Payments are non-refundable and cannot be pro-rated. ANet reserves the right to terminate services related to the Program and this Agreement if any payment is more than thirty (30) days past due.

3.2 Printing. Partner is responsible for all printing and printing costs associated with duplicating the Assessment Materials prior to the administration of each assessment, as set forth on the cover sheet.

4. **TERM, TERMINATION**

4.1 Term. Unless earlier terminated or extended as described below, the term of the Agreement will commence on the Effective Date and continue for the period set forth on the Cover Sheet (the “Term”).



4.2 **Termination.** Each Party may terminate this Agreement upon written notice in the event the other Party commits any material breach of this Agreement and fails to cure such breach within thirty (30) days after written notice of such breach.

4.3 **Obligations on Termination.**

(a) Upon the expiration or termination of this Agreement, Partner will (a) cease using the Platform and all ANet Content, and (b) promptly return to ANet or, at ANet's option, destroy all copies of any ANet Content in Partner's possession or control.

(b) During the 30 days following termination or expiration of this Agreement, ANet will not erase any Partner Generated Content and Partner may retrieve Partner Generated Content from the Platform without assistance from ANet.

4.4 **Extensions.** The Term may be extended by the parties by mutual written agreement signed by the parties.

4.5 **Survival.** The following Sections will survive any expiration or termination of this Agreement: Sections 1.5, 1.6, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 3, 4.3, 4.4, 5, 6, 7, 8, 9, 10, 11 and 12.

5. **CONFIDENTIALITY**

5.1 **Confidential Information.**

(a) **Definition:** "Confidential Information" means any and all information or data, regardless of whether it is in tangible form, disclosed orally or in writing, by either Party (the "Disclosing Party") to the other Party (the "Receiving Party"), (a) that the Disclosing Party has identified as confidential or proprietary (either orally or in writing), and (b) such information which is reasonably understood by a reasonable person to be confidential or proprietary information of the Disclosing Party; provided, however, that in any event ANet's Confidential Information includes (i) all information relating to the Program, including without limitation the ANet Content and the Platform, and (ii) the terms of this Agreement, including without limitation pricing information.

(b) **Exclusions:** Information and data will not be deemed "Confidential Information" if such information: (i) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party;

(ii) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; or (iv) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

(c) **Obligations:** The Parties will use reasonable measures to protect the secrecy of, avoid disclosure and unauthorized use or reproduction of the other Party's Confidential Information. Without restricting or otherwise limiting the exercise by a Party of the rights and licenses expressly granted to it under this Agreement, Confidential Information may be disclosed to only (1) such employees and consultants of the Parties as may have a need to know such information in connection with the exercise of its rights and performance of its obligations under this Agreement, and (2) legal or financial advisors of the Parties, provided that such employees and consultants are bound by written agreements, and advisors are bound by ethical duties, in each case respecting such Confidential Information in accordance with the terms of this Section 5.1.

6. **REPRESENTATIONS, WARRANTIES AND EXCLUSIONS**

6.1 **Representations and Warranties.** ANet represents and warrants to Partner that ANet will implement the Program in a professional and workmanlike manner. Each Party represents and warrants to the other Party that such Party has the required rights, power and authority to enter into this Agreement and to grant all rights, authority and licenses granted hereunder.

6.2 **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PROGRAM (INCLUDING WITHOUT LIMITATION THE PLATFORM AND ANET CONTENT) IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND AND ANET DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. PARTNER ACKNOWLEDGES THAT ANET DOES NOT WARRANT THAT THE PROGRAM (INCLUDING WITHOUT LIMITATION THE PLATFORM) WILL BE PROVIDED IN AN UNINTERRUPTED OR ERROR FREE FASHION AT ALL TIMES, OR THAT THE



PROGRAM WILL MEET PARTNER'S REQUIREMENTS.

7. INDEMNIFICATION

7.1 Indemnification by ANet. ANet will defend at its expense any claim, suit or proceeding (each, a "Claim") brought against Partner by any third party to the extent such Claim is based upon a claim that Partner's proper use of the Platform or any ANet Content in accordance with the terms of this Agreement infringes such third party's rights under any United States patent or copyright, and ANet will pay all costs and damages finally awarded against Partner by a court of competent jurisdiction as a result of any such Claim. If Partner's proper use of the Platform or any ANet Content in accordance with the terms of this Agreement constitutes or in ANet's opinion might be held to constitute infringement as set forth above, ANet may, at its option, (a) modify the Platform or ANet Content, as applicable, so as to avoid infringement or misappropriation; (b) procure the right for Partner to continue to use the Platform or ANet Content, as applicable; or (c) terminate the Agreement and provide to Partner a refund of the prorated fees. The foregoing indemnity will not apply to any Claim based upon or arising from any use of the Platform or ANet Content outside the scope of this Agreement or in a manner for which it was not designed.

7.2 Indemnification by Partner. Partner will defend at its expense any Claim brought against ANet by a third party to the extent such Claim (a) arises out of ANet's proper use of the Partner Materials in accordance with the terms of this Agreement, or (b) alleges that any Partner Generated Content infringes the intellectual property rights or proprietary rights of others or has caused harm to a third party. Partner will pay all costs and damages finally awarded against ANet by a court of competent jurisdiction as a result of any such Claim.

7.3 Additional Terms. The foregoing obligations in this Section 7 are subject to the Party that is seeking indemnification (a) promptly notifying the other Party in writing of such Claim; (b) promptly giving the other Party the right to control and direct the investigation, preparation, defense and settlement of such Claim; and (c) giving assistance and full cooperation for the defense of same.

8. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL ANET BE LIABLE TO PARTNER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING,

WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST DATA, OR FOR ANY AND ALL OTHER DAMAGES OR LOSSES, EVEN IF ANET HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. ANET WILL NOT BE LIABLE FOR ANY DAMAGES, COSTS, OR LIABILITIES IN EXCESS OF THE FEES PAID OR PROPERLY PAYABLE BY PARTNER UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS PRECEDING THE TIME OF ANY CLAIM.

9. NON-SOLICITATION

During the Term and for one year thereafter, each Party agrees not to solicit, entice or persuade any employee or consultant of the other Party to leave the services of such other Party, provided that the foregoing will not prevent any Party from employing or engaging such an employee who is responding to a general recruiting solicitation. Without limiting the foregoing, in the event that either Party plans on engaging or employing any person that such Party knows is or was an employee or consultant of the other Party during the Term, such Party must provide prior written notice to the other Party.

10. PUBLICITY

10.1 ANet will be entitled to (a) identify Partner as a customer of ANet, (b) use Partner's name in any marketing, promotional or sales literature, or in any other form of publicity, and (c) publicize, by news release or other public announcements, the existence of an arrangement between the Parties.

10.2 Partner hereby grants permission to take photographic, audio and video recordings of Partner employees, contractors and consultants during sessions with Partner and Partner and Network events. ANet will use such photographic, audio and video recordings only for the purposes of education, professional learning, advertising, promotion, marketing, and/or public relations. Partner waives any right to royalties or other compensation arising or related to the use of such images and recordings. Partner represents that it has all necessary rights to grant such permission to ANet including having acquired all related and necessary consents from its employees, contractors and consultants.

11. DISPUTES

Any controversy or claim arising out of or relating to this Agreement, or breach thereof, will be settled as follows: Members of the senior management



of both Parties will meet to attempt to resolve such disputes. If a dispute cannot be resolved within ten (10) business days, either party may make a written demand for mediation. Within thirty (30) days after such written notification, the parties will meet for one (1) day with an impartial mediator. The costs and expenses of the mediator will be shared equally by the parties. If the dispute is not resolved by mediation, the dispute will be settled by binding arbitration conducted in accordance with the JAMS procedures pursuant to its Streamlined Arbitration Rules and shareProcedure, by a single arbitrator, in Boston, Massachusetts. The arbitrator will be selected as provided in the Streamlined Arbitration Rules and Procedure. The arbitrator may not award non-monetary or equitable relief of any sort. The arbitrator will have no power to award damages inconsistent with this Agreement. No discovery will be permitted in connection with the arbitration unless it is expressly authorized by the arbitrator upon a showing of substantial need by the Party seeking discovery. All aspects of the arbitration will be treated as confidential. Neither the parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a Party will give written notice to all other parties and will afford such parties a reasonable opportunity to protect their interests. The result of the arbitration will bind the Parties, and judgment on the arbitrator's award may be entered in any court having jurisdiction. Each Party will bear its own costs of the arbitration. The fees and expenses of the arbitrator will be shared equally by the Parties.

12. GENERAL

12.1 Relationship. Nothing in this Agreement will be construed to place the Parties in an agency, employment, franchise, joint venture, or partnership relationship. Neither Party will have the authority to obligate or bind the other in any manner.

12.2 Governing Law, Jurisdiction. All disputes, claims or controversies arising out of this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its rules of conflict of laws. Subject to and without limiting Section 11 of this Agreement, each of the Parties hereto hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of the Commonwealth of Massachusetts and of the United States of America located in the Commonwealth of Massachusetts for any litigation among the Parties hereto arising out of or relating to this Agreement pursuant to Section 12.9.

12.3 No Assignment. Neither Party may assign this Agreement, in whole or in part, or, in the case of Partner, sublicense any of the rights granted herein, in each case without the prior written consent of the other Party, provided, however, that either Party (the "Assigning Party") may assign this Agreement without the written consent of other Party to an entity succeeding to all or substantially all the assets and business of the Assigning Party by merger or purchase, provided that such entity expressly assumes all of the terms and conditions of this Agreement. Any attempted assignment, delegation or transfer by an Assigning Party in violation hereof will be null and void. Subject to the foregoing, this Agreement will be binding on the Parties and their successors and assigns. For clarity, ANet may subcontract any of its obligations hereunder to a third party.

12.4 Severability. In the event that any provision of this Agreement is found to be unenforceable, such provision will be reformed only to the extent necessary to make it enforceable, and such provision as so reformed (and all other provisions) will continue in effect, to the extent consistent with the intent of the Parties as of the Effective Date.

12.5 Force Majeure. ANet will not be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control, including, without limitation, earthquake, flood, or other natural disaster, act of God, pandemics or any public health crisis, labor controversy, civil disturbance, terrorism, war (whether or not officially declared) or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree.

12.6 Amendment; Waiver. This Agreement may not be amended or modified, in whole or part, except by a writing signed by duly authorized representative of both Parties. No provision or part of this Agreement or remedy hereunder may be waived except by a writing signed by a duly authorized representative of the Party making the waiver. Failure or delay by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

12.7 Notices. All notices under or related to this Agreement will be in writing and will reference this Agreement. Notices will be deemed given when: (i) delivered personally; (ii) sent by confirmed telecopy or other electronic means; (iii) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) day after deposit with a commercial overnight carrier, with written

verification of receipt. All communications will be sent to the addresses set forth on the Cover Sheet or such other addresses designated pursuant to this Section 12.7.

12.8 Entire Agreement. This Agreement constitutes the entire agreement between the Parties. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments or quotations.

12.9 Remedies. Each Party retains all rights not expressly granted hereunder and any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy available under this Agreement or otherwise. Because a breach of any obligations set forth in Sections 5 (Confidentiality), 1.5 (Ownership) and 9 (Non-Solicitation) will irreparably harm a party and substantially diminish the value of a Party's proprietary rights or its Confidential Information, the Parties agree that if either Party believes in good faith that the other Party has or intends to breach any of its obligations thereunder, the other Party will, without limiting its other rights or remedies, be entitled to seek equitable relief (including, but not limited to, injunctive relief) to enforce its rights hereunder, including without limitation protection of its proprietary rights. The Parties agree that a Party need not invoke the procedures set forth in Section 11 in order to seek injunctive or declaratory relief.