

MASTER SERVICES AGREEMENT

This Agreement between **EdTec Inc.** ("EdTec"), and **Contra Costa School of Performing Arts** ("Client"), is entered into as of February 28, 2020. Client desires that EdTec perform, and EdTec agrees to perform, consulting services for Client, and accordingly, the parties agree to the following terms and conditions:

- 1. Engagement.** Client hereby engages EdTec to render the services (the "Services") set forth on each Statement of Work executed by the parties hereunder (each, a "Statement of Work"). The Services and each Statement of Work are governed by this Agreement. Client understands that a portion of the Services may require the acquisition or licensing of third-party software, hardware, content, graphics, or other materials ("Third-Party Materials"); that EdTec is not obligated to resell or sublicense such Third-Party Materials to Client; and that Client is responsible for obtaining all such materials, if any, directly from the third party.
- 2. Client Responsibilities; Acceptance.** Client will provide suitable equipment, information, and site and system access and facilities (including but not limited to telecommunications services, office services, and supplies). Client will also satisfy any assumptions and perform any Client obligations identified in a Statement of Work. Client shall make available to EdTec, in a timely manner, all data, files, documentation, or other information necessary or appropriate for the performance of the Services. Client will be responsible for, and EdTec shall be entitled to rely upon, the content, accuracy, completeness, and consistency of all such data, materials, and information. Client understands and acknowledges that there is a risk that information sent by electronic means may be viewed or received by unauthorized persons, and agrees that by sending or receiving information by electronic means, Client shall be deemed to have accepted this risk and the consequences of any such unauthorized disclosure. Tasks that are not specifically assigned to EdTec in any Statement of Work are Client's sole responsibility and are subject to Client's supervision, management, and control. Client understands that EdTec's performance is dependent on Client's timely and effective performance of Client's responsibilities and timely decisions and approvals by Client. All Services and Deliverables provided to Client shall be deemed accepted if, within ten (10) days after delivery,
- 3. Price and Payment.** Except as otherwise set forth in a Statement of Work, Client will (a) pay EdTec for Services at the rates set forth in a Statement of Work and (b) reimburse EdTec for all out-of-pocket costs incurred by EdTec in connection with the Services ("Expenses"). Any services provided, or costs incurred, by EdTec to fulfill otherwise unmet assumptions or Client obligations hereunder, or at the request of Client but outside the scope of a Statement of Work, will be deemed Services or Expenses, as applicable, and are subject to the preceding sentence. Except as otherwise set forth in a Statement of Work, EdTec will invoice for fees and Expenses on a monthly basis, and Client will pay such invoices within 30 days. Client will pay or reimburse EdTec for any taxes assessed upon the Services, except for taxes based on EdTec's net income. If Client fails to pay any invoiced amount within thirty (30) days from date of invoice, the unpaid amount shall accrue interest at a rate of the lesser of one and one-half (1.5%) percent per month or the highest rate allowed by law, and EdTec further reserves the right to suspend the provision of Services under any and all Statements of Work in the event an invoice is thirty days past due.
- 4. Ownership.** Upon EdTec's receipt of Client's final payment therefor, Client shall have a perpetual, nontransferable, non-sublicensable, non-exclusive, paid-up right and license to use, copy, modify, and prepare derivative works of any deliverables originally developed in the course of the Services, whether individually by EdTec or jointly with Client ("Deliverables"). Client's rights in the Deliverables shall be solely for Client's internal business purposes, and not for use in connection with the provision of products or services to any third party. To the extent any Deliverable contains any Underlying EdTec Intellectual Property (as defined below), EdTec grants to Client, subject to the terms and conditions of this Agreement, a non-exclusive, royalty-free, non-transferable, non-sublicensable license, for its internal business purposes only, to use the Underlying EdTec Intellectual Property

solely in its use of the Deliverables as contemplated by this Agreement. "Underlying EdTec Intellectual Property" shall mean EdTec's proprietary intellectual property, such as technology, methodologies, processes and know-how, and including without limitation EdTec's templates, software and other tools, formulae, hardware designs, frameworks, algorithms, software code (in source and object forms), user interface designs, architecture, class libraries, objects, and documentation (both printed and electronic), and any related intellectual property rights throughout the world existing as of the Effective Date, and also including any derivatives, improvements, enhancements, or extensions of Underlying EdTec Intellectual Property conceived, reduced to practice, or developed during the term of this Agreement. EdTec shall own all right, title, and interest in and to the Deliverables and the Underlying EdTec Intellectual Property. All intellectual property rights in the Deliverables and the Underlying EdTec Intellectual Property shall remain in and/or are assigned to EdTec by Client, and Client shall have or obtain all necessary authority to make such assignment. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section. Nothing contained herein will be construed as limiting EdTec's rights to use or market any of its intellectual property, including but not limited to methodologies, know-how, workplans, software, and functional and technical architecture, as well as pre-existing materials and related documentation, without obligation of any kind to Client. Any EdTec software delivered to Client by EdTec that was not developed by EdTec under this Agreement will be subject to a separate license agreement with respect to such software, and until such agreement is executed, Client will have a revocable, non-transferable license for its internal business use only to any such software. To the extent this Agreement contemplates EdTec's use of, or combination with, other intellectual property or data, or other interaction of or with any intellectual property (including software) or data supplied by Client, Client warrants that it has the right to so supply such intellectual property or data for such use, combination, or interaction, and Client will indemnify and defend EdTec against any claims to the contrary. Notwithstanding the foregoing, the rights granted by EdTec hereunder do not include any Third-Party Materials, which shall be subject to

the terms and conditions of the applicable license or other agreement between Client and such third party.

5. Warranties and Remedies.

A. Industry Standards. EdTec warrants that all Services will be performed in accordance with applicable industry standards. If any element of the Services does not conform to the foregoing warranty in any material respect, and Client provides EdTec with written notice describing the material non-conformity within the claims period identified in Section 5.D, EdTec will reperform such element in a manner that does conform, except that if such reperformance is impracticable, in EdTec's sole discretion, EdTec will refund the fees allocable to such nonconforming element. The foregoing remedy represents Client's sole remedy, and EdTec's sole liability in the event of a non-conformity with the warranty provided in this Section 5.A.

B. Infringement. EdTec warrants that its provision of Services hereunder will not infringe any United States patent, or any copyright or trade secret, which is protected under United States law on the date hereof. This warranty does not apply to infringement arising out of Client's use of the Services in combination with any software not furnished by EdTec, Client's use of the Services in a manner for which they were not designed, or modifications to the Services by Client or a third party. If the use of any element of the Services is enjoined as a result of any claim arising out of a breach of this warranty, EdTec will, at its option and expense (i) procure for Client the right to continue to use such element, (ii) replace such element with a comparable element which is noninfringing, (iii) modify such element so it becomes noninfringing, or (iv) refund to Client the fees paid hereunder allocable to such element. Any such modified or replacement element will conform to EdTec's warranties contained herein. EdTec will indemnify Client from and defend Client against any third party claim of patent or copyright infringement that arises solely out of breach of the foregoing warranty, by paying the costs of defending, and damages awarded in respect of, such claim, but only if Client promptly advises EdTec of such claim in

writing, tenders the defense thereof to EdTec, cooperates with EdTec in the conduct of such defense, and uses reasonable efforts to mitigate its damages.

C. Exclusivity. The warranties set forth in this Section 5 are exclusive. NO OTHER WARRANTIES OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED (INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY), WILL APPLY. Without limiting the generality of the foregoing, EdTec will have no responsibility for the adequacy or performance of (i) any software not created by EdTec pursuant to this Agreement, (ii) any hardware, or (iii) any services provided by any third party. The express remedies set forth in this Section 5 will constitute Client's exclusive remedies for any claim that Services do not conform to any warranty or are otherwise defective.

D. Claims Period. No claim with respect to any part of the Services may be made more than 45 days after such part was performed unless such claim was not reasonably discoverable within such 45 day period, in which case a claim may be made at any time prior to 30 days after discovery of such claim, or 120 days after such part was performed, whichever is earlier. Any such claim will include a reasonably detailed statement of the basis therefor.

6. Liability and Consequential Damages.

A. EdTec's aggregate liability on all claims of any kind, whether based on contract, indemnity, warranty, tort (including negligence), strict liability, or otherwise, for all losses or damages arising out of or relating to a Statement of Work will in no case exceed an amount equal to three times the average monthly fee actually paid EdTec pursuant to that Statement of Work. Any costs incurred, and services (at the rates in such Statement of Work) provided, by EdTec in connection with any attempt to provide an express remedy or indemnity provided for in this Agreement or such Statement of Work will be deemed amounts paid by EdTec for purposes of its aggregate liability.

B. In no event, whether based on contract, indemnity, warranty, tort (including negligence), strict liability, or otherwise, will EdTec, its Affiliates (as defined below), or subcontractors, or any of their respective directors, officers, employees or agents, be liable for (i) special, incidental, exemplary, punitive, consequential, or indirect damages, including without limitation lost sales, profits, or revenue, or claims of customers, suppliers or funders of Client for such damages, (ii) any losses or damages connected with, or resulting from any data, software, hardware, or services provided by Client or any third party, or (iii) any statement or representation made by a EdTec employee regarding a third party vendor. The foregoing limitations and disclaimers will apply irrespective of whether the possibility of such damages has been disclosed to EdTec in advance or could have reasonably been foreseen by EdTec. For purposes of this Agreement, the term "Affiliate" includes any person or entity which, directly or indirectly, (i) is owned or controlled by the party in question, (ii) owns or controls such party, or (iii) is owned or controlled by any person or entity described in clause (ii) of this sentence.

C. Allocation of Risk. The allocations of liability in this Section 6 represent the agreed and bargained-for understanding of the parties and EdTec's compensation for the Services and Deliverables reflects such allocations. The parties agree further that they will look only to the assets of the other party in connection with any liabilities hereunder and in no event shall they have any claim against any director, officer, stockholder, or employee of the other party in connection with this Agreement.

7. Force Majeure. EdTec will not be liable for any delay in performance or inability to perform due to force majeure, including without limitation any acts of God, acts or omissions of Client, major equipment failures, fluctuations or nonavailability of electrical power or telecommunications equipment, or any other act, omission, or occurrence beyond EdTec's reasonable control. If EdTec's performance is delayed by force majeure, the time for performance will be extended.

8. Injury and Property Damage. Except to the extent the indemnified party is compensated by insurance,

EdTec and Client (a) will indemnify each other from any liability for bodily injury (including death) or tangible property damage caused by the indemnifying party's acts or omissions and (b) will, at the indemnifying party's expense, defend any suits or other proceedings asserting such liability brought by third parties against the indemnified party and will pay all expenses and satisfy all judgments which may be incurred or rendered against the indemnified party, but only if the tangible property damage, personal injury, or death does not result from the sole negligence of the indemnified party.

9. Use of Client Name. EdTec may identify Client as a client in EdTec's marketing materials.

10. Non-Solicitation. During the period beginning with the date hereof and ending twelve (12) months after all Services have been performed, neither Client nor its Affiliates will solicit for employment or services any employee or contractor of EdTec who or which was directly involved in the provision of Services to Client hereunder. If, during this same period, Client employs or engages an EdTec employee or contractor, with or without solicitation, then Client will pay EdTec a fee equal to four months compensation for such individual (based on full-time employment or services).

11. Termination.

A. Without Cause. Either party may at any time and without cause terminate this Agreement by giving thirty (30) days' written notice of termination to the other party. Termination of this Agreement shall not affect any Statements of Work then in effect. Upon such termination, Client shall pay EdTec for all Services rendered and Expenses incurred by EdTec prior to the effective date of termination under completed Statements of Work, and shall continue to perform its obligations under this Agreement, including without limitation its payment obligations under Section 3, for any Statements of Work then in effect until completion of such Statements of Work in accordance with their respective terms.

B. For Cause. Either party may, upon giving thirty (30) days' written notice identifying specifically the basis for such notice, terminate the applicable Statement of Work (and not any

other Statement of Work) for breach of a material term or condition of the applicable Statement of Work, unless the party receiving the notice cures such breach within the thirty (30) day period. Upon such termination, Client shall pay EdTec for all Services rendered and Expenses incurred by EdTec prior to the effective date of termination. In addition, if EdTec terminates a Statement of Work under this Section 11.B, Client shall also pay EdTec for any demobilization or other costs resulting from such early termination.

C. For Bankruptcy. This Agreement may be terminated by either party if the other party (a) terminates or suspends its business activities, (b) becomes insolvent, admits in writing its inability to pay its debts as they become due, makes an assignment for the benefit of creditors or becomes subject to direct control of a trustee, receiver or similar authority, or (c) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes, which is not dismissed within sixty (60) days after commencement of such proceeding.

D. Effects of Termination. In the event of a termination pursuant to Section 11.A or Section 11.B, other than a termination by EdTec pursuant to Section 11.B due to Client's failure to pay amounts properly due and owing pursuant to this Agreement, EdTec will continue to provide Services until the effective date of any such termination and will cooperate reasonably with Client to provide for an orderly transition of the Services to Client at the time of any such termination. EdTec will render a final billing to Client after the effective date of any such termination, and Client will pay the same in accordance with Section 3. The provisions of this Agreement will survive any such termination in accordance with their terms.

12. Dispute Resolution.

A. Mediation. Any disputes between Client and EdTec hereunder are subject to mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association in Alameda, California as a condition precedent to the commencement of any binding arbitration or other legal proceeding hereunder.

B. Arbitration. Any disputes between Client and EdTec hereunder that were subject to but not resolved by use of the mediation procedure set forth in subsection A above will be resolved by binding arbitration in Alameda, California under the Expedited Commercial Rules of the American Arbitration Association by one arbitrator who is an attorney at law. The pre-trial discovery rules of the CA Code Civ. Proc. will apply to such arbitration. The arbitrator will issue a written statement of Findings of Fact and Conclusions of Law underlying the arbitrator's decision and will include in any award the reasonable attorneys' fees, expert fees and costs of the prevailing party. The arbitrator may not award damages or provide for remedies in excess of the limitations contained herein. During the pendency of any such mediation or arbitration under subsections A and B herein, the parties will continue to perform their obligations under this Agreement. The use of the foregoing procedure is a condition precedent to the commencement of any legal proceeding hereunder.

C. Waiver of Jury Trial. EACH PARTY HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF THIS AGREEMENT, OR ANY OTHER AGREEMENT OR TRANSACTION BETWEEN THE PARTIES.

D. Injunctive Relief. Notwithstanding anything to the contrary in this Section 12, either party hereto may bring a claim for injunctive relief against the other party in the event of a dispute between them.

13. Miscellaneous.

A. This Agreement will be governed in all respects by the laws of California, without regard to any conflicts of law principle, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law.

B. This Agreement contains the complete agreement between the parties. All previous and collateral agreements, representations, warranties, promises, and conditions relating to the subject matter of this Agreement are superseded by this Agreement and, if not

explicitly incorporated in this Agreement, will not be binding on either party. This Agreement may only be amended by a writing signed by both parties. Each Statement of Work issued hereunder will be deemed to be part of this Agreement. The invalidity, in whole or part, of any provision of this Agreement will not affect the remainder of that provision or this Agreement.

C. Waiver by a party of any default by the other will not be deemed a waiver of any other default irrespective of whether such default is similar.

D. All notices, claims, and approvals given under this Agreement must be in writing and delivered in person, by first class or express mail or facsimile addressed as set forth below or such other address that a party gives by notice. Notice given in accordance with this subsection will be deemed given when received.

E. This Agreement may not be assigned by Client without the prior approval of EdTec. EdTec's rights and obligations hereunder are freely assignable and delegable.

F. Nothing in this Agreement confers upon any person, other than the parties hereto or their respective permitted assigns and successors, any rights or remedies under this Agreement.

G. Each party to this Agreement is an independent contractor. No provision of this Agreement or act of the parties hereunder pursuant to this Agreement will be construed to express or imply a joint venture, partnership, or relationship other than vendor and purchaser of the Services. No employee or representative of either party will at any time be deemed to be under the control or authority of the other party, or under the joint control of both parties. Each party is liable for all workers' compensation premiums and liability, federal, state, and local withholding taxes or charges with respect to its respective employees and will indemnify the other from any claims brought against the other in respect thereto.



SIGNATURES

The parties have duly executed this Agreement as of the date first above written.

EDTEC INC. By: _____ Name: Steve Campo Title: President & CEO Date: _____ 1410A 62 nd Street Emeryville, CA 94608 Fax: 510.663.3503	CONTRA COSTA SCHOOL OF PERFORMING ARTS Signature: _____ Name: _____ Title: _____ Date: _____ Address: _____ _____ Email: _____ Phone: _____ Fax: _____
--	--

The undersigned officer of Contra Costa School of Performing Arts, a California public charter school (the "School"), hereby certifies that this Agreement has been duly approved by the governing body of the School, at a publicly noticed meeting held on March 2, 2020.

CONTRA COSTA SCHOOL OF PERFORMING ARTS

Signature: _____

Name: _____

Title: _____