

# Master Services Agreement

This is a Master Services Agreement ("Agreement") dated as of August 23, 2018, between Playworks Education Energized, a California nonprofit public benefit corporation ("Playworks"), and San Mateo-Foster City School District, a school district ("Customer").

## Background

Playworks is a nonprofit organization that believes in the power of play to bring out the best in every child. Playworks helps schools, districts, youth programs, and other organizations make the most of recess (or their play time) through on-site staffing, consultative support, professional development, and free resources. Customer wishes to collaborate with Playworks on the basis set out in this Agreement.

## Playworks and Customer agree as follows:

### 1. Program

1.1 Scope Playworks will provide services ("Services") in connection with the program ("Program") described in the Program Plan(s) attached as Exhibit A ("Plan"). Program elements, personnel and activities, the Services, and Customer's responsibilities, are set out in the Plan. Playworks and Customer will each carry out its responsibilities in accordance with this Agreement and with due care. Modifications to the Program Plan(s) shall be documented as Exhibit C ("Program Plan Modifications")

1.2 Timeframe Playworks will provide Services during the period stated in the Plan including any renewal periods.

1.3 Fee Customer will pay Playworks fees in the amount(s) and on the date(s) set out in the attached Exhibit B Payment and Fees.

1.4 Communication Playworks and Customer understand that communication and collaboration are central to Program effectiveness. To that end, Customer and Playworks will meet periodically as set out in the Plan, advise each other of issues including any concerns involving interactions among Playworks and Customer students and staff, provide one another with timely access to information, and otherwise cooperate in carrying out the Program.

### 2. Confidentiality, Data Collection, and Evaluation

2.1 Compliance In working together, Playworks and Customer may share sensitive information with one another including information about Customer environment, activities, students, and staff. In addition, as described in Section 2.3, Playworks will collect and analyze data about Program outcomes. In all of these activities, Playworks is committed to and will comply with applicable laws and the provisions set out in this Section 2 related to the collection, use, and confidentiality of such information, and will cooperate with Customer in developing appropriate protocols.

2.2 Confidentiality Playworks will use Customer's Confidential Information (defined below) only in connection with its activities under this Agreement and will keep it confidential, using at least the same degree of care Playworks uses to prevent the unauthorized use or disclosure of its own confidential information. Playworks may disclose Confidential Information only to persons who need access to the information for the purposes contemplated by this Agreement or as otherwise required by law. All Confidential Information furnished by Customer is and shall remain Customer's property. "Confidential Information" means non-public information relating to Customer including, without limitation, information relating to Customer environment, staff, funding, and operations. It

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does not include information that is generally available to the public, information already known by Playworks before entering into this Agreement, or information Playworks independently develops.

**2.3 Data Collection and Evaluation** Playworks will collect and analyze data about Program implementation and outcomes in order to evaluate the impact of its programs generally, support more effectively Customer and its other partner schools and clients, meet external reporting requirements, and support fundraising and school recruitment. Customer and Playworks will cooperate in connection with such data collection and assessment activities. Playworks will require third party evaluators and data analysts it retains, if any, to enter into appropriate confidentiality agreements with Playworks with respect to Customer information. Customer acknowledges that Playworks will own and retain all rights, title, and interest in the data collected through the Program.

**2.4 Student Data** Playworks may in carrying out Services have access to individually identifiable student data. It will maintain the confidentiality of and use such information solely for Program purposes and in accordance with applicable law and Customer policy.

**2.5 External Reporting** Playworks reports data and evaluation results to funders, partners, researchers, and other third parties. Playworks will report student-level data only in an aggregate and anonymized manner. Except as contemplated by the Plan or as required by law, Playworks will disclose Program data and results on a no-name basis unless Customer has given its prior written consent for disclosure of its name in such disclosure.

## **3. Methodology and Materials**

**3.1 Materials** In providing Services, Playworks will provide Customer with curricula, games, training materials, assessment tools, reference documents, and other materials (collectively, "Materials"). Playworks may make Materials available in various ways, including, without limitation, through providing hard copies, presenting Materials at training or consultation sessions, enabling Customer to download Materials from Playworks websites, and providing Customer with access to interactive websites.

**3.2 Customer Use and Sharing** Customer may use, copy, adapt, and distribute the Materials in connection with Program activities and with Customer activities going forward. In addition, Customer may share Materials for non-commercial purposes with other schools, districts, teachers, and the like (such as at workshops or conferences), so long as Customer provides appropriate attribution to Playworks and does not remove or obscure any Playworks copyright or trademark markings on any Materials. Customer may not, however, distribute any Materials for any purposes intended or directed toward commercial advantage or monetary compensation, or distribute outside Customer any Customer-created derivatives or revisions of any Materials. For clarity, the non-exclusive license granted under this Section 3.2 is intended to permit use by Customer of Materials only for purposes related to its educational mission.

**3.3 Ownership of Materials** Playworks owns and retains all copyrights and all other rights in the Materials and any other proprietary know-how or methodologies used or shared by Playworks in providing Services. Customer acknowledges that the Materials are proprietary to Playworks. Playworks may incorporate any information from Customer in future versions of the Materials, may share them with other schools or third parties, and may reproduce and create derivative materials.

## **4. External Communication**

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4.1 Customer External Communication Customer may identify itself as a client of Playworks in internal and external communications, including, without limitation, on its website or outreach materials. Customer may use Playworks name and logos in connection with these efforts.

4.2 Playworks External Communication Playworks may identify Customer as a client or "partner" in internal and external communications, including, without limitation, on its website or outreach materials. Playworks may use Customer's name and logos in connection with these efforts.

4.3 Logo Use Each of Playworks and Customer acknowledges that (a) it has no interest in the other party's name, logo and other marks other than the rights granted under this Agreement; (b) the other party will remain the sole owner of interest in its marks; and (c) all goodwill in the other party's marks will inure solely to the benefit of the other party. Each of Playworks and Customer will comply with any reasonable trademark guidelines that the other may provide.

4.4 Visitors Playworks may ask Customer if Playworks can bring educators, funders, and other visitors to Customer to observe Program activities. Playworks will carry out any such visits in line with Customer policy regarding visitors generally.

## **5. Acknowledgements**

5.1 Not Substitute for Physical Education Customer acknowledges that the Services and Program are not a substitute for physical education ("PE"). Playworks staff may coordinate with an existing PE program, but are in no way a substitute for credentialed PE teachers. Playworks will not provide input or otherwise be involved in any way with respect to assigning grades to students in PE courses or programs.

5.2 Not Responsible for Supervising Recess Customer acknowledges that Playworks is not responsible for supervising recess. Playworks staff may help to structure recess, but Customer must provide their own staff to supervise recess.

5.3 Recess Privileges Customer acknowledges that Playworks does not support the removal of recess privileges for extended periods of time as a method of student discipline.

5.4 Fingerprinting and Background Checks. As may required by applicable law, Playworks employees, volunteers and other service providers providing the Services ("Service Providers") shall undergo Playworks' fingerprinting and background checks. Upon reasonable written request by Customer and subject to any applicable law relating to employee privacy, Playworks shall provide Customer written verification that the results of any such checks do not preclude any Service Provider from providing the Services.

## **6. Relationship**

6.1 Independent Contractor Playworks is an independent contractor and is solely responsible for its activities in providing Services. Playworks has sole responsibility for all tax returns and payments required by any federal, state, or local tax authority in connection with its activities and receipt of fees under this Agreement.

6.2 Independent Entities The arrangements contemplated by this Agreement do not create a partnership, franchise, joint venture, employment, fiduciary, or similar relationship for any purpose. Neither Playworks nor Customer has the power or authority to bind or obligate the other to a third party or commitment in any manner. Any use of the term "partner" or comparable term in any communication is solely for convenience. Playworks and Customer will

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each have sole responsibility for the planning, management, and implementation of its own activities relating to Program execution.

### **7. Insurance, Indemnification, and Liability**

7.1 Insurance Playworks will, upon request by Customer, provide to Customer proof of liability and workers compensation insurance for all Playworks staff who provide Services at Customer, and name Customer as an additional insured on such policies. Customer will provide its own liability, workers compensation, and other insurance in respect of Customer employees, students, and guests that participate in the Program and Customer's activities generally in connection with the Program.

7.2 Indemnification by Playworks Playworks will defend, indemnify, and hold Customer and its directors, officers, employees, agents, and assigns (collectively, "Customer Indemnified Parties") harmless against all claims, liabilities, losses, damages, and expenses, including reasonable expenses, resulting from claims by third parties for death, bodily injury, or damage to tangible property caused solely by the gross negligence or willful misconduct of Playworks in providing Services.

7.3 Indemnification by Customer Customer will indemnify, defend, and hold Playworks and its directors, officers, employees, agents, and assigns (collectively, "Playworks Indemnified Parties") harmless against all claims, liabilities, losses, damages, and expenses, including reasonable attorneys' fees and expenses, resulting from any claims by third parties relating to or arising out of the Program, or Customer's actions or other matters related to the subject matter of Program.

7.4 Limitation of Liability Neither Playworks nor Customer will be liable to the other for any special, indirect, incidental, consequential, punitive, or exemplary damages arising out of or relating to this Agreement, even if either party has been apprised of the likelihood of such damages. Playworks' total liability under this Agreement (including, without limitation, any amounts payable under Section 7.2) will not exceed the fees Customer has paid or will pay Playworks as set out in the Plan, except that no such limitation will apply in respect of liabilities involving the gross negligence, willful misconduct, or fraud of Playworks.

### **8. Termination**

8.1 Termination by Customer Customer may terminate this Agreement by providing written notice to Playworks of that decision. Such a termination will be effective 60 days after delivery of the notice. If Customer terminates the Agreement under this Section 8.1, Customer will not be entitled to any refund of amounts previously paid, and, if fees are not already fully paid, will pay Playworks for services rendered through the effective date of termination. Playworks will invoice Customer for such services. Customer will pay the invoiced amount no later than 30 days after delivery of such invoice.

8.2 Suspension by Playworks Playworks may suspend delivery of Services if Customer fails to make timely payment of fees or if Playworks, in its discretion, determines that the Customer environment or engagement is not safe or healthy for students or Playworks staff or otherwise conducive to effective Program delivery. Such a suspension will be effective upon Playworks' delivery to Customer of a written notice to that effect. Customer and Playworks will cooperate in identifying and trying to address the problem. If the problem is not addressed to Playworks satisfaction within a reasonable time, Playworks may terminate the Agreement under Section 8.3.

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**8.3 Termination for Failure to Perform** If either party breaches any of its obligations under this Agreement, the non-breaching party may provide the breaching party with written notice of the breach. If the breaching party fails to cure the breach within thirty (30) days after receipt of such notice, the non-breaching party may terminate this Agreement upon delivery to the breaching party of a written notice to that effect, with the termination effective upon delivery of such notice. The non-breaching party may in its reasonable discretion determine whether the breach has been cured.

**8.4 Effect of Termination** Upon termination of this Agreement under Section 8.3, neither Customer nor Playworks may continue identifying itself as a partner of the other or use externally the other party's logo or other marks. Playworks and Customer will cooperate in transition activities and will use reasonable efforts to minimize interruption and any adverse impacts of the termination. Sections 2, 3, and 7-9 will survive the expiration or termination of this Agreement.

## **9. General Provisions**

**9.1 Entire Agreement** This Agreement, together with the Plan, expresses Playworks' and Customer's final, complete, and exclusive agreement, and supersedes any and all prior or contemporaneous written and oral agreements, communications, course of dealing, or understandings between Playworks and Customer relating to its subject matter. It is understood that Customer's use of Playworks' websites is subject to the terms of use for such sites, which set out obligations in addition to those contained in this Agreement. If there are any inconsistencies between the Plan or such website terms and this Agreement, this Agreement will control.

**9.2 Amendment** This Agreement may be amended only as stated in and by a writing signed by both Playworks and Customer that recites that it is an amendment to this Agreement.

**9.3 Severability and Waiver** If any provision of this Agreement is held illegal, invalid, or unenforceable, all other provisions of this Agreement will nevertheless be effective, and the illegal, invalid, or unenforceable provision will be considered modified such that it is valid to the maximum extent permitted by law. Any waiver of the provisions of this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

**9.4 Assignment** Neither Customer nor Playworks may assign its rights or delegate its duties under this Agreement to anyone else without the prior written consent of the other, except that each may assign all of its rights and obligations under this Agreement without the other's consent in connection with a merger, acquisition, reorganization, sale or transfer of substantially all of its assets, or other operation of law.

**9.5 Third Party Beneficiaries** Except as specifically provided in Sections 7.2 and 7.3 this Agreement is for the exclusive benefit of Playworks and Customer, and not for the benefit of any third party, including, without limitation, any Customer student, teacher, parent or guardian, or vendor.

**9.6 Governing Law; Jurisdiction** This Agreement will be governed by California law. Playworks and Customer consent to the exclusive jurisdiction of the state and federal courts for Alameda County, California.

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9.7 Counterparts This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.

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Playworks and Customer signed this Agreement as of the date set out in its first paragraph.

**PLAYWORKS EDUCATION ENERGIZED**

Signature:

Printed Name: Ben Neveras

Title: Regional Partnership Director

Date: 8/23/18

**SAN MATEO-FOSTER CITY SCHOOL DISTRICT:**

Signature:

Printed Name:

Title: Chief Business Officer

Date: 8/23/18

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**PLAYWORKS****Fee Schedule - Payment Terms & Details**

<b>Playworks payment detail:</b>		
<b>Fee Total</b>	<b>The total fee for selected Playworks service(s) is:</b>	<b>\$80,000.00</b>
<b>Payment Terms</b>	Playworks fees are fixed, and may not be prorated, regardless of program start or end date. Payment on all invoices is due within 30 days of invoice date (or within 60 days for Full year invoices). Please make all checks payable to Playworks Education Energized	
<b>Payment Schedule</b>	<b>For full year services:</b>	<b>A.1 Coach (full-time), A.2 Coach (part-time) and A.3 TeamUp</b>
	Please select from the following payment schedule options	Full year: invoiced by 9/1/2018
		Semester: 50% invoiced by 9/1/2018 and 50% by 1/20/2019
		Quarterly: 4 equal payments invoiced in 9/2018, 11/2018, 1/2019 and 4/2019
	<b>For all other services</b>	<b>A.4 - A.19</b>
	Customer to be invoiced upon services rendered	

**Customer payment detail:**

<b>Customer Fee funding sources</b>	<b>Source</b>	<b>Amount</b>	<b>Notes</b>
	Categorical funds		
	General purpose funds		
	PTA/PTO		
	Other		
<b>Customer Accounts Payable detail</b>	Contact Name		
	Contact Title		
	Address		
	Email Address		
	PO#		
	<b>Additional detail</b>		

Confirmed and agreed:

**PLAYWORKS EDUCATION ENERGIZED**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Ben Neveras

Title: \_\_\_\_\_ Regional Partnership Director

Date: \_\_\_\_\_ 7/20/18

**San Mateo-Foster City School District**Signature: Carol ChowPrint Name: Carol Chow Carolyn ChowTitle: Chief Business OfficerDate: 9/5/18