

**MASTER SERVICES AGREEMENT**

THIS MASTER SERVICES AGREEMENT ("Agreement") is entered on **07/23/2021**, between **EdTheory LLC. ("Provider")**, with its principal place of business located at **6701 Koll Center Parkway # 250, Pleasanton, CA 94566** and **Ravenswood City School District ("Client")**, with its principal place of business located at **2120 Euclid Ave. East Palo Alto, CA 94303**.

WHEREAS, Provider is engaged in the business of providing personnel for the performance of certain specified services ("Services").

WHEREAS, Client wishes to retain Provider to provide Services to Client in connection with the project or projects set forth in the Statement of Work attached hereto as Exhibit A and incorporated herein by reference, and Provider wishes to be so engaged.

NOW, THEREFORE, Provider and Client agree as follows:

**1. Scope of Services**

Provider shall use reasonable efforts to provide the Services and provide certain personnel (the "Supplied Personnel") to perform the work (the "Work") described in Exhibit A: Statement of Work ("Statement of Work") for Client in accordance with the terms and conditions of this Agreement.

**2. Price and Payment Terms**

A. Client will pay Provider for the Services and Supplied Personnel at the rates set forth in the Statement of Work and will also pay any additional costs or fees set forth in this Agreement. Provider will invoice Client for services provided under this Agreement on a monthly basis. Payment is due on receipt of invoice. Invoices will be supported by the pertinent time sheets or other agreed system for documenting time worked by the Supplied Personnel. Client's signature or other agreed method of approval of the work time submitted for Supplied Personnel certifies that the documented hours are correct and authorizes Provider to bill Client for those hours. If a portion of any invoice is disputed, Client will pay the undisputed portion.

B. All invoices are due on receipt and shall be considered past due if no payment is received within 30 days of receipt of the invoice. A finance charge of 1.5% per month on the unpaid amount of an invoice, or the maximum amount allowed by law, will be charged on past due accounts. Payments by Client will thereafter be applied first to accrued interest and then to the principal unpaid balance. Any attorneys' fees, court costs, or other costs incurred in collection of delinquent accounts shall be paid by Client.

C. Supplied Personnel are presumed to be nonexempt from laws requiring premium pay for overtime, holiday work, or weekend work. Provider will charge Client special rates for premium work time only when Supplied Personnel's work on assignment to Client, viewed by itself, would legally require premium pay and Client has authorized, directed, or allowed the Supplied Personnel to work such premium work time. Client's special billing rate for premium hours will be the same multiple of the regular billing rate as Provider is required to apply to the Supplied Personnel's regular pay rate. (For example, when federal law requires 150% of pay for work exceeding 40 hours in a week, Client will be billed at 150% of the regular bill rate.)



### **3. Relationship of the Parties**

A. The Supplied Personnel are employees of Provider. Provider is, for example, responsible for withholdings and payment of any applicable local, state or federal payroll taxes, and payment for workers' compensation protection. Provider will indemnify and hold Client harmless against any claims made or brought by Supplied Personnel, government or taxing authority relating to such payments or withholdings.

B. Provider's performance of its duties and obligations under this Agreement will be that of an independent contractor, and nothing herein shall create or imply an agency relationship between Provider and Client, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

### **4. Term and Termination**

Unless terminated as provided herein, this Agreement shall in effect for a period of two (2) years and terminate upon completion of the Work as provided herein. Client may terminate this Agreement without cause upon thirty (30) days written notice. In the event of termination without cause, Client agrees to pay Provider for all the Work performed up to the date of termination. Either party may terminate this Agreement for material breach upon twenty-four (24) hours' written notice. Termination for breach will not preclude the terminating party from exercising any other remedies for breach.

### **5. Ownership**

For purposes of this Agreement, "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, models, work in progress, deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Provider alone or with others which result from the Services performed hereunder. However, "Work Product" shall not include IEP's, information contained in IEP's and assessments on individual students. Provider and Client agree that Provider owns all rights, title and interest in and to the Work Product. Provider's rights under this Section will include, but not be limited to: (i) all copies of the Work Product, in whole or in part; (ii) all intellectual property rights in the Work Product, including patent, copyright, trade secret, trademark and other proprietary rights; and (iii) all modifications to, and derivative works based upon, the Work Product, including but not limited to any corrections, enhancements, derivative works, updates or other modifications, including custom modifications, whether made by Client or any third party.

### **6. Provider's Proprietary Information; Confidentiality**

A. Provider possesses and will possess certain Provider Proprietary Information which is important to its business. For purposes of this Agreement, "Provider Proprietary Information" is information that was or will be developed, created, or discovered by or on behalf of Provider, or which became or will become known by, or was or is conveyed to Provider, which has commercial value in Provider's business. "Provider Proprietary Information" includes, but is not limited to, Services, all information related to Provider products or services, including, without limitation, trade secrets, inventions (whether or not patentable), techniques, data, databases, know-how, processes, algorithms, computer code, software design and architecture, schematics, forecasts, strategies, ideas, customer and product development plans, names and expertise of employees and consultants, and all other technical, business, financial and confidential information which is received in confidence by or for Provider from any other person. Client understands that this Agreement creates a relationship of confidence and trust between Client and Provider with respect to Provider Proprietary Information.

B. Provider possesses or will possess "Provider Materials" which are important to its business. For purposes of this Agreement, "Provider Materials" are documents or other media or tangible items that contain or embody Provider Proprietary Information or any other information concerning the business, operations or plans of Provider, whether such documents have been prepared by Provider or by others. "Provider Materials" include, but are not limited to, drawings, photographs, charts, graphs, notebooks, customer or client lists, information relating to the salary, compensation or qualifications of employees or consultants, computer disks, tapes or printouts, sound recordings and other printed,



typewritten or handwritten documents, as well as samples, prototypes, models, products and the like.

C. All Provider Proprietary Information and all rights, title and interest in and to all patents, patent rights, copyrights, trade secret rights and other intellectual property and rights anywhere in the world (collectively "Provider Rights") in connection therewith shall be the sole property of Provider.

D. Except as expressly allowed under this Agreement, at all times, both during term of this Agreement and after its termination, Client agrees (a) to hold the Provider Proprietary Information in strict confidence as a fiduciary and to take all precautions Client employs with respect to its most confidential materials, but no less than reasonable precautions, to protect such Provider Proprietary Information, (b) not to disclose any such Provider Proprietary Information, or any information derived there from except to those employees or consultants that have a "legitimate need to know" and are similarly bound in writing, (c) not to make any use whatsoever at any time of such Provider Proprietary Information except for the sole business purpose approved by Provider in writing, and (d) not to copy, reverse engineer, reverse compile or attempt to derive the composition or underlying information, structure or ideas of any Provider Proprietary Information.

E. Without granting Client any right or license, the foregoing shall not apply with respect to information that Client can document (i) was rightfully in Client's possession without an obligation of confidentiality, as evidenced by written documentation, prior to receipt thereof from Provider; (ii) is or hereafter becomes, through no act or failure to act on Client's part, generally known on a non-confidential basis in the relevant industry; (iii) is furnished to Client by a third party as a matter of right without restriction on disclosure; or (iv) is independently developed by Client without use of or reference to Provider Proprietary Information. Client may make disclosures required by court order provided Client uses its best efforts to limit disclosure and to obtain confidential treatment or a protective order and has allowed Provider to participate in the proceeding.

F. All Provider Materials shall be the sole property of Provider. Client agrees that during the term of this Agreement, Client will not remove any Provider Materials from Client's business premises or deliver any Provider Materials to any person or entity outside of Client or Provider, except as required in connection with this Agreement. Client further agrees that, immediately upon the termination of this Agreement by Client or by Provider for any reason, or during the term of this Agreement, if so requested by Provider at any time, Client will immediately cease all use of and promptly return all Proprietary Information, Provider Materials, all documents or media containing any Proprietary Information, and any and all copies and extracts thereof, excepting only that information or material (i) expressly allowed by Provider hereunder, (ii) previously distributed by Client with Provider's prior written consent; and (iii) distributed generally to the public by Provider.

G. All Proprietary Information which the Provider makes, conceives, reduces to practice or develops (in whole or in part, either alone or jointly with others) during the term of the Agreement shall be the sole property of Provider to the maximum extent permitted by law. Provider shall be the sole owner of all Provider Rights in connection therewith.

H. Client will promptly notify Provider of any unauthorized release of Provider Proprietary Information. Client acknowledges and agrees that due to the unique nature of the Provider Proprietary Information, there can be no adequate remedy at law for any breach of Client's obligations hereunder, that any such breach may allow Client or third parties to unfairly compete with Provider resulting in irreparable harm to Provider, and therefore, that upon any such breach or any threat thereof, Provider shall be entitled to appropriate equitable relief in addition to all other remedies available at law and to be indemnified by Client from any loss or harm, including, without limitation, attorneys' fees in connection with any breach or enforcement of Client's obligations hereunder or the unauthorized use or release of any such Provider Proprietary Information.

I. Client's obligations under this Provision 6 shall continue in effect after termination of the Agreement, regardless of the reason or reasons for termination, and whether such termination is voluntary or involuntary on Client's part.



## **7. Limitation of Liability**

A. The Client shall indemnify, hold harmless, and defend the Provider, their officers, agents and employees from and against all claims, damages, losses and expenses, including reasonable costs and attorney's fees arising out of or resulting from District's agents or employees under this agreement. Provider shall indemnify hold harmless, and defend District, their officers, agents and employees from and against all claims, damages, losses and expenses, including reasonable cost and attorney's fees, arising out of or resulting from Provider's agents or employees under this agreement.

## **8. Non-Solicitation of Employees and/or Subcontractors.**

A. Except as may be otherwise agreed in writing by the Client and Provider, during the term of this Agreement and for twelve (12) months thereafter, Client shall not offer employment to or employ, either directly or indirectly, whether as an independent contractor, consultant, employee or otherwise, any individual who is or was during the validity of the Agreement and the preceding 12 months, an employee of Provider, or was involved in the performance of this Agreement. In the event of a breach of any provision in this clause, Provider shall have the right, without limiting any other remedies available to it under the law, to seek an injunction, in any court having jurisdiction, enjoining Client from continuing its breach.

B. It is acknowledged that solicitation by Client of any of Provider's employees or subcontractors will cause Provider to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by Provider of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such solicitation, Client agrees that liquidated damages may be assessed and recovered by Provider as against Client, in the event of wrongful solicitation and without Provider being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore Client shall be liable to Provider for payment of liquidated damages in the amount of Twenty Thousand Dollars (\$20,000) for each employee or subcontractor wrongfully solicited by Client. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Client shall pay them to Provider without limiting Provider's right to terminate this Agreement for breach as provided elsewhere herein.

## **9. Terms of Buy out**

Notwithstanding anything contained in Provision 8, in the event the Client and the Supplied Personnel agree to enter into a direct employment, the Client may not directly hire the Supplied Personnel without the consent of EdTheory. The Client agrees to pay a professional fee equivalent to 20 % of the Supplied Personnel's annual salary for permanent placement of the Supplied Personnel (SLP, OT, PT and all related discipline). This fee will be invoiced only upon an offer by the Client and an acceptance by the Supplied Personnel, after which EdTheory shall release any future financial obligations that the Client owes them regarding that specific Supplied Personnel.

## **10. Arbitration**

The Provider and Client agree that any dispute or controversy arising out of or relating to any interpretation, construction, performance or alleged breach of this Agreement shall be settled and determined solely and exclusively by arbitration to be held in the County of Santa Clara, State of California, and to be administered by the Judicial Arbitration and Mediation Service ("**JAMS**") in accordance with the JAMS Commercial Arbitration Rules then in effect. The arbitration shall be conducted by a single arbitrator who shall be appointed by agreement of the Parties or, if no agreement can be reached, by JAMS pursuant to its rules. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive, and binding on the Parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. The Provider and Client shall each pay one-half of the costs and expenses of such arbitration, and the Provider and Client shall each pay its own attorneys' fees and expenses. However, the arbitrator shall award reasonable attorneys' fees and costs to the prevailing Party in the arbitration. Nothing in this section is intended to prevent either party from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration.



## **11. Miscellaneous**

**11.1 Governing Laws:** It is the intention of the parties hereto that the internal laws of the State of California (irrespective of its choice of law principles) shall govern the validity of this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties hereto.

**11.2 Binding upon Successors and Assigns:** Subject to, and unless otherwise provided in, this Agreement, each and all of the covenants, terms, provisions, and agreements contained herein shall be binding upon, and inure to the benefit of, the permitted successors, executors, heirs, representatives, administrators and assigns of the parties hereto.

**11.3 Severability:** If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and application of such provision to other persons or circumstances shall be interpreted so as best to reasonably effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision which will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provision.

**11.4 Entire Agreement:** This Agreement, the exhibits hereto, the documents referenced herein, and the exhibits thereto, constitute the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties with respect hereto and thereto. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof.

**11.5 Amendment and Waivers:** Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party to be bound thereby. The waiver by a party of any breach hereof or default in the performance hereof shall not be deemed to constitute a waiver of any other breach or default or any succeeding breach or default.

**11.6 No Waiver:** The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions.

**11.7 Attorneys' Fees:** Should an action be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover, as an element of the costs of suit and not as damages, reasonable attorneys' fees to be fixed by the court (including without limitation, costs, expenses and fees on any appeal). The prevailing party shall be the party entitled to recover its costs of suit, regardless of whether such suit proceeds to final judgment. A party not entitled to recover its costs shall not be entitled to recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining if a party is entitled to recover costs or attorneys' fees.



**11.8 Notices:** Whenever any party hereto desires or is required to give any notice, demand, or request with respect to this Agreement, each such communication shall be in writing and shall be effective only if it is delivered by personal service or mailed, United States certified mail, postage prepaid, addressed as follows:

EdTheory, LLC.	6701, Koll Center Parkway Suite # 250 Pleasanton, CA 94566 Fax: (800) 613-2977 <b>Attn:</b> Marvel Philip (Chief Executive Officer)
Ravenswood City School District	2120 Euclid Ave. East Palo Alto, CA 94303 <b>Attn:</b> Toni Stone (Director Human Resources)

Such communications shall be effective when they are received by the addressee thereof; but if sent by certified mail in the manner set forth above, they shall be effective five (5) days after being deposited in the United States mail. Any party may change its address for such communications by giving notice thereof to the other party in conformity with this Section.

**11.9 Further Assurances:** Each party agrees to cooperate fully with the other parties and to execute such further instruments, documents and agreements and to give such further written assurances, as may be reasonably requested by any other party to better evidence and reflect the transactions described herein and contemplated hereby and to carry into effect the intents and purposes of this Agreement.

**11.10 Construction of Agreement:** This Agreement has been negotiated by the respective parties hereto and their attorneys and the language hereof shall not be construed for or against any party. The titles and headings herein are for reference purposes only and shall not in any manner limit the construction of this Agreement, which shall be considered as a whole.

**11.11 Client's Representations:** Client represents and warrants that it is free to enter into this Agreement and to perform each of the terms and covenants of it. Client represents and warrants that it is not restricted or prohibited, contractually or otherwise, from entering into and performing this Agreement, and that its execution and performance of this Agreement is not a violation or breach of any other agreement between the Client and any other person or entity.

**11.12 Advice of Counsel:** EACH PARTY ACKNOWLEDGES THAT, IN EXECUTING THIS AGREEMENT, SUCH PARTY HAS HAD THE ADVICE OF INDEPENDENT LEGAL COUNSEL AND HAS READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT.



**11.13 Force Majeure:** Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay is caused by events or circumstances beyond the delayed party's reasonable control.

**11.14 Counterparts:** This Agreement may be executed by facsimile and in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

<b>PROVIDER: EDTHEORY, LLC</b>	<b>CLIENT: RAVENSWOOD CITY SCHOOL DISTRICT</b>
 Signature:	Signature:
Name: <b>Marvel Philip</b>	Name:
Title: Chief Executive Officer	Title:
Date: 07/23/2021	Date:



## EXHIBIT A: STATEMENT OF WORK

### 1.0 Statement of Work

Provider agrees to provide California Credentialed Special Education Teachers, State licensed Speech Language Pathologists, Occupational, Physical Therapists (hereinafter referred to as "SpEd" "SLPs", "OTs" & "PTs") to Client as requested by Client. Any Special Education Teachers, SLPs, OTs & PTs provided will hold and maintain appropriate registration, credentials and licensure to practice in the state. Evidence of registration, credentials and licensure will be provided to Client by provided upon commencement of the Work. Provider also agrees to provide supervision for its Clinical Fellows ("RPE-CFs").

Providers SpEd Teachers, SLPs, OTs, PTs & CFs will provide therapy services in compliance with applicable state and federal regulations and in accordance with Client's policies, procedures, rules and regulations. Client will inform provider and the SpEd Teachers, SLPs, OTs, PTs & CFs of Client's policies, procedures, rules and regulations prior to commencement of the Work.

Client shall notify Provider immediately and in writing of any Special Education Teachers, SLP's, OT's, PT's or CF's failure to comply with any state or federal regulations or of Client's appropriate policies, procedures, rules and regulations.


SpEd Teachers, SLPs, OTs, PTs and RPE-CFs shall have access to any records necessary to provide services required herein accordance with all applicable federal, state and local statutes, rules and regulations, as well as under HIPPA regulations and Client's policies, procedures, rules and regulations.

### 2.0 Hourly Billing Rates

Client will pay Provider for the Services rendered pursuant to this Agreement at the hourly rate as follows:

Speech Language Pathologist - Monolingual (\$ 87.00) Bilingual (\$ 89.00)
Speech Language Pathology Assistant - Monolingual (\$ 66.00) Bilingual (\$ 68.00)
School Psychologist - Monolingual (\$ 97.00) Bilingual (\$ 99.00)
Special Education Teacher - \$ 87.00
Adapted Physical Education - \$ 87.00
Occupational Therapist - \$ 87.00
Board Certified Behavior Analyst (BCBA) - \$ 102.00
School Nurse: \$ 87.00
Licensed Vocational Nurse: \$57.00

### 3.0 Special Conditions: N/A

PROVIDER: EDTHEORY, LLC	CLIENT: RAVENSWOOD CITY SCHOOL DISTRICT
	Signature:



Signature:	
Name: <b>Marvel Philip</b>	Name:
Title: Chief Executive Officer	Title:
Date: 07/23/2021	Date: