



*Mid-Valley Special Education Cooperative*

Dr. Marianne Fidishin, Executive Director

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MEMORANDUM

TO: Mid-Valley Special Education Cooperative Executive Advisory Board

FROM: Marianne Fidishin, PhD, Executive Director

DATE: November 8, 2017

RE: Key2Ed, Inc. Agreement

The Executive Director recommends approval of the Key2Ed Agreement to provide professional development to staff from Mid-Valley Special Education Cooperative, joint agreement school districts and additional outside school districts.

Key2Ed was founded in 2004 to provide educational consulting services to school districts, state departments of education, and other educational agencies and entities serving students K – 12th grade. The Key2Ed staff members have extensive training, knowledge, and expertise coming from their years on the job and field educational experiences throughout the country, including work with charter schools.

This agreement allows Key2Ed to provide a one-day professional development workshop entitled, “Co-Facilitation and Student Led IEP”. The focus of said workshop is to help educators and administrators ensure students have a more active, rather than passive, role in the IEP process.

The workshop is scheduled for January 17, 2018 at a cost not to exceed \$4500 and supported by the FY18 IDEA Part B grant.

The contract was reviewed and approved by Cooperative attorneys.

## AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES (this "*Agreement*") is made and entered into this 5<sup>th</sup> day of October, 2017 (the "*Effective Date*"), by and between Mid-Valley Special Education Cooperative, an Illinois school district, having its principal offices located at 1304 Ronzheimer Avenue, (the "*Client*"), and Key2Ed, Inc. ("*Contractor*"), an independent contractor, with a principal place of business at 426 Verandah Lane, Franklin, TN 37064 (each, a "*Party*" and collectively, the "*Parties*").

### INTRODUCTORY STATEMENT

WHEREAS, Contractor has agreed to perform professional staff development for the Client by providing Contractor's workshop entitled "Co-Facilitation of Student Led IEP's", and/or other training modules as Client and Contractor may agree (hereinafter, the "*Services*").

NOW THEREFORE, in consideration of the mutual promises herein, the Parties, intending to be legally bound, hereby agree as follows:

### ARTICLE 1. TERM OF CONTRACT

1.01. This Agreement will commence upon the Effective Date, specified above, and shall continue in effect until the Services provided for in this Agreement have been performed or until terminated as provided in this Agreement.

### ARTICLE 2. SERVICES TO BE PERFORMED BY CONTRACTOR

2.01. **Specific Services.** Contractor agrees to perform the Services for Client. The Services will be held for one (1) day in duration in which Contractor shall provide on-site training (the "*Workshop*"). As part of value added Services, Contractor shall provide to Client a seminar follow-up, which will be held at a mutually agreed upon time and provided through technology. The date for the Workshop will be scheduled on January 17<sup>th</sup>, 2018. Client shall ensure that the number of participants attending is no more than 30 participants in the class, unless otherwise agreed by the Parties.

2.2 **Method of Performing Services.** Contractor will determine the method, details, and means of performing the above-described Services.

2.3 **Status of Contractor.** Nothing contained herein or any document executed in connection herewith shall be construed to create an employer-employee, partnership or joint venture relationship between the Client and Contractor. Consultant's employees or consultants are independent contractors and not employees of Client. Any and all sums subject to deductions, if any, required to be withheld and/or paid under any applicable state, federal or local laws shall be Contractor's sole responsibility. Contractor agrees it is not entitled to the rights or benefits afforded to Client's employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave, or any other employment benefit.

2.4 **Payment of Income Taxes.** Contractor is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by Client to

Contractor for the Services under this Agreement. On request, Contractor will provide Client with proof of timely payment.

**2.5 Use of Employees or Subcontractors.** Contractor may, at Contractor's own expense, use any employees or subcontractors as Contractor deems necessary to perform the Services required of Contractor by the Agreement. Client may not control, direct, or supervise Contractor's employees or subcontractors in the performance of those Services.

### **ARTICLE 3. COMPENSATION**

**3.1 Flat Rate.** In consideration for the Services to be performed by Contractor, Client agrees to pay Contractor \$4500.

**3.2 Date for Payment of Compensation.** For Services rendered under this Agreement, Client agrees to pay Contractor the sum set forth in Section 3.01 hereinabove upon Contractor's completion of the Workshop. Contractor will submit to Client an invoice at the end of the on-site portion of the Workshop, and Client agrees to pay the amount due to Contractor within thirty (30) days of receipt of the invoice, subject to the Illinois Local Governmental Prompt Payment Act.

### **ARTICLE 4. OBLIGATIONS OF CONTRACTOR**

**4.1 Non-Exclusive Relationship.** This Agreement is not intended to create an exclusive relationship between the Parties. In connection therewith, Contractor shall be free to perform services for other entities, and Client shall be free to engage the similar services of other vendors.

**4.2 Suitable Place for Services.** Contractor will perform the Services under this Agreement at a suitable location provided by the Client. The Client will be responsible for securing the location for the training and communicating the location, dates, and time of the training to its employees and others who will participate in the training. Contractor will supply all materials and equipment required to perform the Services under this Agreement.

**4.3 Contractor's Qualifications.** Contractor represents that its employees, subcontractors or consultants providing the Services to Client will possess the necessary qualifications and skills necessary to perform the Services under this Agreement. All work will be done in a competent fashion in accordance with applicable standards of the profession Contractor shall have complete and sole discretion for the manner in which the Services under this Agreement will be performed.

**4.4 Indemnification.** Contractor agrees to indemnify and save harmless Client, from and against any losses, damages, claims, demands, suits, liabilities, and expenses (including reasonable attorneys' fees) that arise out of or result from injuries or death to persons or damage to property, including theft, arising out of or caused by the performance of the Services performed by Contractor or persons furnished by Contractor, except if caused by the willful misconduct of Client.

**4.5 Business Policies.** The Client acknowledges that Contractor is not making any policy decisions for the Client. The Client shall be solely responsible for ensuring that its policies and business processes fully comply with Federal, state and local laws, rules, and regulations. The Client shall retain full responsibility for and hold harmless Contractor from the results of any such policy decision.

4.06 **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, CONTRACTOR, ITS PARENT, SUBSIDIARIES, AFFILIATES, OR SUPPLIERS, HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF INFORMATIONAL CONTENT. IN CONNECTION WITH CLAIMS BY CLIENT AGAINST CONTRACT, AND NOT FOR THIRD PARTY CLAIMS SUBJECT TO THE INDEMNIFICATION PROVISION IN 4.4 ABOVE. CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF THE CONTRACTOR, WHETHER ARISING FROM BREACH OF CONTRACT, NEGLIGENCE, OR OTHER COMMON LAW OR STATUTORY THEORY OF RECOVERY, INCLUDING ATTORNEY'S FEES AND COSTS AND EXPERT WITNESS FEES AND COSTS, SO THAT THE AGGREGATE LIABILITY OF THE CONTRACTOR SHALL NOT EXCEED THE AMOUNT OF PAYMENT SPECIFIED IN SECTION 3.01 ABOVE. IT IS INTENDED THIS LIMITATION APPLY TO ANY AND ALL LIABILITY OR CAUSE OF ACTION HOWEVER ALLEGED OR ARISING, UNLESS OTHERWISE PROHIBITED BY LAW, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, BREACH OF CONTRACT, OR ANY OTHER CLAIM WHETHER IN TORT, CONTRACT OR EQUITY.

#### **ARTICLE 5. OBLIGATIONS OF CLIENT**

5.1. **Cooperation of Client.** Client agrees to comply with all reasonable requests of Contractor necessary to the performance of Contractor's duties under this Agreement.

5.2. **Place of Work.** Client agrees to furnish suitable space for use by Contractor while performing the above-described services. Suitable space includes chairs, tables and other appropriate furniture, arranged as prescribed in communication from the Contractor prior to the training date.

#### **ARTICLE 6. TERMINATION OF AGREEMENT**

6.1. **Termination.** Either party may terminate this Agreement at any time by giving forty-five (45) days advance written notice to the other party. Unless otherwise terminated as provided in this Agreement, this Agreement will continue in force until the Services provided for in this Agreement have been fully and completely performed.

6.2. **Termination For Cause.** This Agreement will terminate automatically on the occurrence of any of the following events:

- (a) Bankruptcy or insolvency of either party.
- (b) Sale of the business of either party.
- (c) Default by either party of a term or obligation under this Agreement, in which such default has not been cured within thirty (30) days written notice to the defaulting party describing the default.

Upon the termination of this Agreement, the Client shall pay to Contractor all fees due and owing as of the date of termination.

#### **ARTICLE 7. CONFIDENTIAL INFORMATION; INTELLECTUAL PROPERTY**

7.1 The Client agrees and acknowledges that the Contractor's Services and related training materials contain proprietary and confidential information embodying certain exceptionally valuable trade secrets of Contractor and its licensors that shall be disclosed to the Client in

confidence. "**Confidential Information**" means any non-public information, technical data, trade secrets or know-how (including, but not limited to, information relating to data, research, products, copyrighted materials belongs to Consultants suppliers, formula, process, techniques, services, development, inventions, processes, engineering, techniques, pricing, internal procedures, finances, employees and business opportunities)whether having existed, now existing, or to be developed or created in the future, whether tangible or intangible, and whether or how stored, compiled or memorialized physically, electronically, graphically, photographically or in writing.

7.2 The Client shall hold in strictest confidence any Confidential Information of the Contractor disclosed or made available pursuant to this Agreement. The Client shall not use any Confidential Information received from the Contractor except as expressly permitted under this Agreement, and the Client shall not disclose any such Confidential Information to any third party (except the Client's employees and only on a "need to know" basis and subject to their being bound to protect the confidentiality of the Confidential Information) without the Contractor's prior written consent, unless required to do so by court order or other operation of law, and then only subject to prompt notice to the Contractor.

7.3 The Client acknowledges that Confidential Information may contain trade secrets that derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use. The Parties acknowledge that unauthorized use of Confidential Information will diminish the value of such information and will cause substantial and irreparable damage to the Contractor and its licensors, and that the remedies generally available at law may be inadequate. Accordingly, a breach of this Section 7 shall entitle the Contractor to equitable relief to protect its interest herein, including injunctive relief.

7.4 The Client agrees to maintain the Contractor's trade secrets as secrets and safeguard them with the utmost degree of care so long as such trade secrets remain secret, without regard to the expiration or termination of this Agreement or any expiration of any term for the protection of other Confidential Information.

7.5 The Client hereby acknowledges that the Contractor is the exclusive owner of all rights, title, and interest in and to, or authorized licensee of, all Intellectual Property Rights in its training materials. "**Intellectual Property Rights**" means any and all now known or hereafter devised rights under any intellectual property law or regulation in any jurisdiction throughout the world, whether tangible or intangible, including without limitation copyrights, trademark and trade name rights and similar rights, trade secret rights, patents, designs, algorithms and other industrial property rights, whether arising by operation of law, contract, license, or otherwise, and all registrations, initial applications, renewals, extensions, continuations, issuances, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing), Confidential Information and trade secrets, and the waiver of any "moral rights" associated with such rights. Except as set forth herein, the Client will not acquire any rights in or to any of the Intellectual Property Rights of the Contractor, nor will it take any action that may adversely affect or impair the Contractor's, or its licensor's, rights, title, and interest in or to their Intellectual Property Rights.

7.6 The Client agrees that the Contractor has, shall have, and shall retain, title, exclusive ownership rights and all Intellectual Property Rights and other rights and interests in the Confidential Information, in the content thereof and in the ideas and concepts embodied therein, and in any and all copies, modifications, alterations and enhancements to the Confidential

Information, including any derivative works resulting therefrom. Nothing herein shall be construed to effect any transfer of ownership.

## ARTICLE 8. GENERAL PROVISIONS

8.1 This Agreement, and any amendments thereto, constitutes the complete and entire agreement between Contractor and Client and supersedes and merges all previous communications, oral or written, and all other communications between Contractor and Client relating to the subject matter hereof.

8.2 If any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the Parties, the Parties agree that the invalid or unenforceable provision shall be replaced with a valid provision which most closely approximates the intent and economic effect of the original provision.

8.3 Any failure by Contractor to enforce or exercise any provision of the Agreement or related right shall not constitute a waiver of that right or provision.

8.4 The Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the Parties based upon this Agreement.

8.5 All notices and other communications under this Agreement shall be in writing and shall be deemed given when delivered by certified mail, return receipt requested, postage prepaid or when received if sent by overnight courier. All notices shall be directed to the Parties at the respective addresses set forth above or to such other address as either Party may, from time to time, designate by notice to the other Party.

8.6 Neither Party shall be liable for any non-performance due to any Force Majeure or similar causes, and such failure shall not constitute a breach of this Agreement. "*Force Majeure*" as used herein shall include, without limitation, fires, floods, earthquakes, other acts of God, explosion, strikes and other labor disputes, riots and civil disturbances, war, interruptions of power, and any other similar or dissimilar event or occurrence not within the reasonable control of the Party.

8.7 Those sections that by their very nature survive the expiration or termination of the Agreement, shall survive the termination or expiration of this Agreement.

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

Key2Ed, Inc.

[CLIENT]



Printed Name: Cassie Velasquez

Printed Name: \_\_\_\_\_

Title: Co-Owner and Senior Associate

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_