

**Memorandum of Understanding between the National Institute for Excellence in Teaching and  
ERA Independent School District**

THIS memorandum of understanding (this “MOU”), dated as of August 2, 2021 is made between the National Institute for Excellence in Teaching, a public benefit corporation (“NIET”), ERA Independent School District (“Partner”), with respect to activities connected with the pilot use of NIET’s Character Education Companion Tool. NIET and Partner shall sometimes individually be referred to herein as a “Party,” and together shall sometimes collectively be referred to herein as the “Parties.”

**RECITALS**

- A. NIET seeks feedback from Partner as part of a pilot usage of NIET’s character education materials for the 2021-22 school year (August 2021 through May 2022). Specifically, NIET seeks partner to provide feedback on NIET’s Character Education Companion Tool, support training, materials, and support days. NIET support will include:
- i. access to NIET’s Character Education Companion Tool,
  - ii. access to training on using Character Education Companion Tool,
  - iii. access to a support on character education strategies,
  - iv. access to an online platform of character education modules and resources
  - v. access to NIET’s Principal Standards Rubric training, if desired,
  - vi. stipend of \$3,500 per participating school,
- B. Partner agrees to:
- i. ensure supervisors, principals, and other members as needed attend NIET’s character education training,
  - ii. use NIET’s Character Education Companion Tool throughout the 2021-22 semester,
  - iii. provide feedback on the Character Education Companion Tool, training, and support through three surveys and one focus group: i) survey following the training, ii) survey following the last onsite support day, iii) survey for modules and resources, and iv) focus groups
  - iv. participate in this work as a pilot partner and not make use of the Character Education Companion Tool data publicly in any way, rather all data collected will be used privately by partner or NIET for internal purposes.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises and subject to the terms and conditions set forth herein, the parties hereto agree as follows:

**I. STATEMENT OF OBJECTIVE.**

- A. Partner will support principals and school leaders to engage with NIET’s Character Education Companion Tool for strategies, coaching, and professional learning support. Partner will provide this information back to NIET for feedback purposes.

**II. NIET’S SERVICES.**

- A. Services. During the Term (as defined below) of this MOU, NIET will provide access to materials, including the Character Education Companion Tool, as well as associated training and support. NIET will also collect data during this pilot.
- B. No costs will be charged for participating in this pilot use of materials.

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### III. PARTNER RESPONSIBILITIES.

- A. Cooperation. Partner will facilitate participation from principals and faculty members, make use of the Character Education Companion Tool, and provide feedback on all materials and documents.
- B. Immediately inform NIET of any adjustment needed or the discontinuation of use of the support.

### V. ADDITIONAL TERMS.

1. *Term of MOU.* This MOU shall be effective on August 2, 2021, and terminate, except as provided herein, on June 30, 2022 (the “Term”), unless renewed in writing for a subsequent period. NIET or PARTNER may terminate this MOU during the Term by written notice delivered to the addresses set forth beside each Party’s signature below 30 days in advance of such early termination. The Parties may agree in writing to contract for transition services following such termination. Section IV hereof and the General Terms and Conditions attached hereto shall survive termination or expiration of this MOU.
2. *Sovereign Immunity.* Nothing in this MOU shall be deemed to waive the sovereign immunity of the staff and employees of PARTNER and NIET.
3. *Dispute Resolution.* The CEO of NIET or his/her designee, and the authorized agent of PARTNER shall resolve disputes that develop under this MOU.
4. *General Terms and Conditions.* The General Terms and Conditions, attached hereto and initialed by PARTNER are, by reference hereof, made part of this MOU and all references herein to “this MOU” shall be deemed to refer to this MOU and the General Terms and Conditions together.
5. *Entire Agreement.* This MOU and the General Terms and Conditions contain all of the agreement between the Parties with respect to the matters contained herein and no prior agreement or understanding pertaining to any such matters shall be effective for any purpose.
6. *Amendments.* This MOU may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by each of the Parties.
7. *Counterparts.* This MOU may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. Electronic signatures, including electronic counterparts, shall be recognized and deemed as an original signature to this MOU.

IN WITNESS WHEREOF, for adequate consideration and intending to be legally bound, the Parties hereto have caused this MOU to be executed by their duly authorized representatives

#### FOR AND ON BEHALF OF PARTNER

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
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#### FOR AND ON BEHALF OF NIET

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

## **GENERAL TERMS AND CONDITIONS**

These General Terms and Conditions (“General Terms and Conditions”) are applicable to any Services (as defined below) provided by the National Institute for Excellence in Teaching (“NIET”) as retained and subscribed pursuant to the “**Statement of Work**” (“SOW”, and together with these General Terms and Conditions, the “Agreement”) therein as the Client.

### **1. THE SERVICES**

- a. Provision of the Services. Pursuant to the Statement of Work, NIET has agreed to provide Client with training related services as more particularly described in the Statement of Work, (the “Services”). The Services may be provided to Client in person by NIET personnel, by granting access to NIET’s [EE PASS Portal](#), Portal for Raising Educator Preparation, and Comprehensive Online Data Entry systems (collectively referred to herein as the “Portal”), or as more fully set forth in the MOU. All references herein to “Client” shall refer to Client and its affiliates that are receiving the Services pursuant hereto. Certain Services are available only for as long as clients meet NIET’s eligibility requirements and require execution of additional forms (e.g. website Terms of Use)).
- b. Performance Standard. NIET will perform the Services in a professional manner, using personnel having a level of skill in the area commensurate with the requirements of the Services to be performed. NIET shall use commercially reasonable efforts to maintain the timeliness of the transmission of the Services.
- c. Use of Services. Client agrees that (i) it will not knowingly use the Services in contravention of any laws or regulations, (ii) it will use the Services in accordance with the instructions and reasonable policies established by NIET from time to time and communicated to Client and (iii) it will use the Services only for internal training purposes. Client will not provide, directly or indirectly, any of the Services or any portion thereof to any third-party.
- d. Client Responsible for Compliance with Laws. Client (and not NIET) will be responsible (i) for compliance by Client with all laws and governmental regulations affecting its employees (including labor regulations (e.g., time and attendance) and collective bargaining agreements, and (ii) for any use Client may make of the Services to assist in complying with laws and governmental regulations, including qualifying for and obtaining grants or complying with any related audits.
- e. Web-Based Services. Client understands that a portion of the Services supplied by NIET hereunder are delivered over the Internet and the reliability of the Internet is beyond the reasonable control of NIET. Therefore, although NIET makes reasonable efforts to ensure the accuracy and reliability of such Services, neither NIET nor any third party supplier guarantees such accuracy or reliability, and client acknowledges that NIET, its employees, agents, contractors, sub- contractors and other third party suppliers will not be held liable for any damages suffered or incurred by Client or any other person or entity arising out of (a) any fault, interruption or delay in any service supplied to client, (b) out of any inaccuracy, error or omission in any Service supplied to client, (c) any loss of data, or (d) any reliance upon any Service supplied to Client however such faults, interruptions, delays, inaccuracies, errors or omissions arise, unless due to NIET’s gross negligence or willful misconduct.

### **2. FEES; TAXES**

- a. Fees. Client shall pay NIET for the Services in the amount and at the time set forth in the Statement of Work. Client will pay all invoices, if any, in full within thirty (30) days of invoice date. If Client fails to pay any amount due hereunder, whether by acceleration or otherwise, Client, on written demand, shall pay interest at the rate of 1.5% (or the maximum allowed by law if less) on such past due amount from the due date thereof until the payment date. Client shall reimburse NIET for any expenses incurred, including interest and reasonable attorney fees, in collecting amounts due NIET hereunder.
- b. Taxes. There shall be added to all payments hereunder amounts equal to any applicable sales or use taxes levied or based on this Agreement, unless Client provides the appropriate proof of exemption.

### **3. DISCLAIMER OF WARRANTIES**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NIET EXPRESSLY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, ACCURACY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON- INTERRUPTION OF USE, AND FREEDOM FROM PROGRAM ERRORS WITH RESPECT TO THE SERVICES, THE NIET PRODUCTS, ANY CUSTOM PROGRAMS CREATED BY NIET OR ANY THIRD-PARTY SOFTWARE DELIVERED BY NIET.

### **4. INTELLECTUAL PROPERTY**

- a. Ownership of Proprietary Rights. All software applications and related documentation made available, directly or indirectly, by NIET to Client, including without limitation the Portal and all manuals, reports, studies and similar material created by NIET, as part of the Services (collectively, the “NIET Products”) are the exclusive property of NIET or the third parties from whom NIET has secured the rights to such NIET Product. All rights, title and interest in or to any copyright, trademark, service mark and other proprietary right relating to the NIET Products and the related logos, product names, etc. are

reserved. The use of any software included in, or supplied by NIET for use with, the NIET Products, shall be governed by the license agreement (whether written, shrink-wrapped or on-line) delivered with such software. Neither Client nor any recipient shall: (i) alter or remove from any NIET Product or associated documentation any proprietary, copyright, trademark or trade secret legend, or (ii) attempt to decompile, disassemble or reverse engineer the NIET Product or other confidential and proprietary information.

- b. NIET Infringement Indemnity. NIET will defend Client in any suit or cause of action alleging that the NIET Products, as provided by NIET and used in accordance with the terms of this Agreement, infringe upon any United States copyright, trade secret, or other proprietary right of a third party. NIET will pay damages assessed, including reasonable attorneys' fees, against Client in any such suit or cause of action, provided that, (i) NIET is promptly notified in writing of such a suit or cause of action, (ii) NIET controls any negotiations or defense and Client assists NIET as reasonably required by NIET, and (iii) Client takes all reasonable steps to mitigate any potential damages that may result. The foregoing infringement indemnity will not apply and NIET will not be liable for any damages assessed in any suit or cause of action whereby Client is required to indemnify NIET pursuant to Section 4.c. below. If any NIET Product is held or believed to infringe on any third-party's intellectual property rights, NIET may, in its sole discretion, (a) modify the NIET Product to be non-infringing, (b) obtain for Client a license to continue using such NIET Product, or (c) if neither (a) nor (b) are practical, terminate this Agreement as to the infringing NIET Product and return to Client any unearned fees paid by Client to NIET in advance. This section 4.b. states NIET's entire liability and Client's exclusive remedies for infringement of intellectual property rights of any kind.
- c. Client Infringement Indemnity. To the extent permitted by State law, Client will defend NIET against, and pay damages assessed in, any suit or cause of action alleging that the NIET Products infringe upon any United States copyright, trade secret, or other proprietary right of a third party, to the extent that any such suit or cause of action results from (i) any alteration, change, modification and /or enhancement of the NIET Products made by Client or any third party on behalf of Client without NIET's express permission; (ii) Client's use of the NIET Products in combination with any hardware, software or other materials not expressly authorized by NIET, or use of other than the most current release of the NIET Products that results in a claim or action for infringement that could have been avoided by use of the current release, (iii) use of the NIET Products after Client has been notified that the NIET Products infringe upon the intellectual property rights of a third party, or (iv) use by Client of unmodified NIET Products after Client has been informed of modifications that would avoid claims of infringement.

## 5. GENERAL PROVISIONS.

- a. Protection of Client Files. NIET will take reasonable precautions to prevent the loss of or alteration to Client's data files in NIET's possession, but NIET does not undertake to guarantee against any such loss or alteration. NIET will maintain a record retention policy and may from time to time, in its sole discretion, modify or amend such policy. However, NIET is not and will not be, Client's official record keeper. Accordingly, Client will, to the extent it deems necessary, keep copies of all source documents of the information delivered to NIET.
- b. Confidential Information. All Confidential Information disclosed hereunder will remain the exclusive and confidential property of the disclosing party. The receiving party will not disclose the confidential information of the disclosing party and will use at least the same degree of care, discretion and diligence in protecting the Confidential Information of the disclosing party as it uses with respect to its own confidential information. The receiving party will limit access to Confidential Information to its employees and authorized agents with a need to know and will instruct such persons to keep such information confidential. Notwithstanding the foregoing, (i) NEIT may use information collected in the Portal for its noncommercial research purposes and (ii) the receiving party may disclose Confidential Information to the extent necessary to comply with any law, rule, regulation or ruling applicable to it and to the extent necessary to enforce its rights under this Agreement.

## 6. LIMITATION OF LIABILITY

This Section 6 sets forth the full extent of NIET's liability for damages resulting from this Agreement or the Services rendered or to be rendered hereunder, regardless of the form in which such liability or claim for damages may be asserted, and sets forth the full extent of Client's remedies. Each of NIET and Client acknowledge that the Fees for the Services to be provided hereunder reflect the allocation of risk set forth in this Section 6.

- a. Client Responsibility. Client will be responsible for
  - (i) the consequences of any instructions Client may give to NIET,
  - (ii) Client's failure to use the Services in the manner prescribed by NIET, and (iii) Client's failure to supply accurate and timely information.
- b. Errors and Omissions. NIET's sole liability to Client or any third party for claims of any type or character arising from errors or omissions in the Services that are caused by NIET shall be to correct the affected Client study, report or material, as the case may be. Upon the request of Client, NIET will correct any error or omission made by NIET in connection with the Services at no additional charge to Client.
- c. Limit on Monetary Damages. Notwithstanding anything to the contrary contained in this agreement (other

than and subject to its indemnity obligations pursuant to Section 4B above), NIET's liability under this Agreement for damages (monetary or otherwise) under any circumstances for claims of any type or character made by Client or any third party arising from or related to the Services will be limited in each instance to the lesser of (i) the amount of actual damages incurred by Client or, (ii) NIET's charges for the affected Services; provided however, that NIET's aggregate liability hereunder in any calendar year will not exceed the Fees collected by NIET during the previous twelve (12) months. NIET will issue Client a credit(s) equal to the applicable amount and any such credit(s) will be applied against future Services. The foregoing limitation shall not apply to actual damages incurred by Client as a direct result of the criminal or fraudulent acts of NIET or any of its employees.

- d. No Consequential Damages. NEITHER NIET NOR CLIENT WILL BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR OTHER SIMILAR DAMAGES THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IS SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 7. TERM AND TERMINATION

- a. Term. NIET or Client may terminate the Statement of Work as provided therein. The Terms of this General Terms and Conditions shall survive the termination of the Statement of Work, as applicable.
- b. Post-Termination Services. If the parties agree to any post termination services, such as transition services, the Agreement shall continue to with respect to such Services to the extent not expressly contradicted by any such post-termination agreement.
- c. Post-Termination Data. If requested by Client within 6 months of the termination of the Statement of Work, NIET shall deliver CODE reports to Client in, at NIET's election, an Excel or .pdf format. Client may request within 6 months of the termination of the Statement of Work CODE reports in another format, or raw data, and NIET will attempt to accommodate Client at a fee to be mutually agreed upon by the parties.

## 8. GENERAL

- a. Assignment. Neither party may assign this Agreement without the prior written consent of the other.
- b. Inducement. Client has not been induced to enter into this Agreement by any representation or warranty not set forth in this Agreement. This Agreement contains the entire agreement of the parties with respect to its subject matter. This Agreement shall not be modified except by a writing signed by NIET and Client.
- c. Independent Contractor Status. Each party and its people are independent contractors in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties.
- d. Third Party Beneficiaries. Nothing in this Agreement creates, or will be deemed to create, third party beneficiaries of or under this Agreement, NIET has no obligation to any third party by virtue of this Agreement.
- e. Force Majeure. Any party hereto will be excused from performance under this Agreement for any period of time that the party is prevented from performing its obligations hereunder as a result of an act of God, war, earthquake, civil disobedience, court order, labor dispute, or other cause beyond the party's reasonable control.
- f. Governing Law. This Agreement shall be governed, construed, and enforced according to the laws of the State of Tennessee, without giving effect to principles of conflicts of laws.
- g. Notices. Notices sent to either party shall be effective when delivered in person or transmitted by fax machine, one (1) day after being sent by overnight courier, or two (2) days after being sent by first class mail postage prepaid, to the address or fax number, as the case may be, set forth in the Statement of Work. A facsimile of this Agreement and notices generated in good form by a fax machine (as well as a photocopy thereof) shall be treated as "original" documents admissible into evidence unless a document's authenticity is genuinely placed in question.

**Executed in conjunction with, and hereby made part of, that certain**

**MOU Client Initial** \_\_\_\_\_

**Dated** \_\_\_\_\_