



**Agreement between  
University of North Dakota and ED Technology Specialists, Inc.**

This Agreement (the "Agreement") is made and entered into this 1st day of May, 2022 (the "Effective Date") by and between University of North Dakota ("University") having an office at O'Kelly Hall Room 300, 221 Centennial Drive, Stop 9021, Grand Forks, ND 58202-9021, and ED Technology Specialists, Inc. ("ED Tech") PO Box 16, Rocky Point NY, 11778.

WHEREAS, University offers graduate professional development courses to many, including teachers and educational leaders, with varying objectives, degree and non-degree;

WHEREAS, ED Tech provides online graduate professional development courses for educators, school leaders and other professionals for the purpose of enrichment, professional career advancement and providing creative educational activities;

WHEREAS, University recognizes the quality of ED Tech's professional development work;

AND WHEREAS, the parties seek to better serve North Dakota teachers and administrators.

THEREFORE, in consideration of the promises set forth herein, the parties agree as follows:

***SCOPE OF ED TECHNOLOGY SPECIALISTS, INC. GRADUATE PROFESSIONAL DEVELOPMENT CREDIT COURSES***

University shall retain ED Tech, at all times as an independent contractor and on a non-exclusive basis, to deliver online courses to teachers for graduate professional development credit (2900-level). University recognizes the quality of ED Tech professional development online courses and agrees to award graduate professional development credit for such online courses once the student has successfully completed his or her required ED Tech coursework and successfully completed University's supplemental requirements, if any.

University will provide to fully paid students one graduate professional development credit (15-hour course) or three graduate professional development credits (45-hour course) for completion of each approved ED Tech course. University and ED Tech will have the option to alter this credit/course-hour structure, upon mutual agreement of both parties. ED Tech will provide instructors to facilitate and grade online coursework using the letter grade option.

ED Tech will determine the appropriate content, subject matter, and materials and periodically update the course as needed, in each case in Ed Tech's sole discretion. ED Tech will provide a summary of course evaluations and comments to University twice each year. ED Tech will facilitate and grade coursework using a Letter Grade.

University will enroll students, maintain records and databases, track lessons and grades and provide other customer service as needed and/or as reasonably requested by Ed Tech. University will market the course using standard marketing activities (web, printed summer brochure, email blasts, etc.).

### ***TUITION AND FEE STRUCTURE***

ED Tech will make available, and charge to enrollees the required costs and expenses to be borne by enrollees for, the ED Tech courses, including the ED Tech fee and University fee. University will post all ED Tech courses on their UND Professional Development for Educators website. ED Tech will collect all fees from enrollees, and will pay University their share of fees collected on a net thirty, monthly basis. These graduate professional development credits are subject to change upon the mutual agreement of University and Ed Tech in writing, and any updated pricing arising therefrom (which shall also be mutually agreed to by University and Ed Tech in writing) will be appended to this Agreement. Courses will be priced as follows:

Three (3) Graduate Professional Development Credits:

University:	\$150
ED Tech:	\$280
TOTAL:	\$430

### ***REVENUE DISTRIBUTION***

- i. ED Tech will collect and retain all payments received for the delivery of ED Tech courses.
- ii. ED Tech will issue a check to University on a net 30, monthly basis in consideration of payments received from UND students registered in ED Tech courses.

### ***MARKETING***

The courses will be marketed simultaneously by both University and ED Tech during the term of this Agreement, each at their own cost and expense, as follows:

- i. University shall market the courses in a manner akin to the customary marketing of its other online programs, which manner shall include, but not be limited to:
  - a. Reference in direct marketing materials, including flyers distributed to local schools and districts.
  - b. Emails to educator and administrator alumni (both graduate and undergraduate) at least once a year.
    - i. For new Ed Tech courses, an email specific regarding the new course(s) will be sent to educator and administrator alumni.
  - c. Online course campaigns (at least once a year)

- d. Presence on University website
  - e. Digital marketing for the PDE program, which includes additional exposure to our educational partner courses.
- ii. ED Tech shall market the courses in the manner in which it customarily markets its projects.

Both parties agree to allow the counterparty to use corporate logos and other branding materials subject to, and exclusively for the purposes of, this Agreement. A party may not copy, reproduce, distribute, or create derivative works from any intellectual property of the counterpart whatsoever, and said counterparty and its affiliates shall retain all rights not expressly granted herein. The University logo to be used by ED Tech pursuant to this clause is the UND "Flame" logo.

Both parties reserve the right to review and/or reject in writing the marketing materials and marketing activities offered under the terms of this Agreement.

#### ***COURSE EVALUATION***

ED Tech will provide compiled course evaluation results to University on a semiannual basis for courses that have had University enrollments.

#### ***DURATION, RENEWAL, AND TERMINATION***

This Agreement may be terminated by either party upon written notice. This Agreement is in place for two (2) years and will be reviewed at the end of each year. This Agreement shall terminate effective two (2) months from the date of receipt of the notice by the other party. Upon termination, University students then currently enrolled in a ED Tech course will be permitted to complete the course (within six (6) months from the time of registration) for which they have registered and paid. Upon termination of this Agreement, University shall not offer courses or work developed under this Agreement without the approval of ED Tech. All sections of this Agreement which by their nature should survive termination.

#### ***LIABILITY AND DEFAULT***

Each party shall be responsible for claims, losses, damages, and expenses (whether or not any one or more of the foregoing are made by third parties or arise out of third party claims and/or suits, as applicable) proximately caused by breaches of representations and/or warranties made herein, as well as the negligent or wrongful acts or omissions of said party and/or its employees acting within the scope of their employment. The tort liability of the University shall be determined pursuant to chapter 32-12.2 of the North Dakota Century Code and is subject to the conditions and limitations contained therein. Neither party shall be liable or deemed to be in default to the extent any delay or failure to perform its obligations hereunder if such failure results directly or indirectly from any cause beyond its reasonable control, including but not limited to acts of God, acts of civil or military authority, terrorism, fire, flood, strikes, war, epidemics, pandemics, or shortage of power. ED Tech shall indemnify University against any and all third-party claims for infringement of copyright, trademark, or trade dress arising out of University's use of ED Tech's Content hereunder. Notwithstanding anything herein to the

contrary, ED Tech's total liability, if any, with respect to the subject matter of this Agreement (including, but not limited to, liability arising out of contract, tort, strict liability, breach of warranty or otherwise), will be limited to two times the fees collected inuring to ED Tech (namely, to the extent such fees collected are not paid to University) for the services under this Agreement in the six (6) months prior to the act or injury that gave rise to the liability. ED Tech shall not be responsible for any damage or loss caused by, and University is responsible for, any loss of data if such data contains, any viruses, malware, ransom viruses, trojan horses, trap doors, back doors, Easter eggs, worms, time bombs, cancelbots, or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or personal information. ED Tech and its affiliates will not be liable in any event for loss or inaccuracy of software, operating systems, data, loss of profits or revenue, or indirect, special, incidental or consequential damages (including, without limitation, the cost of any substitute procurement), whether or not foreseeable and even if ED Tech has been advised of the possibility of such damages. The foregoing limitations of liability shall be valid only to the extent permitted under North Dakota law.

#### ***INDEPENDENT CONTRACTOR STATUS***

Ed Tech is engaged by University as an independent contractor and not an employee, agent, affiliate, partner, joint venturer, or representative of University, and nothing in this Agreement should be construed to create a partnership, joint venture or employer-employee relationship.

#### ***CONFIDENTIALITY***

Each party agrees that, except as directed by the other party and except as necessary for University to comply in all respects with North Dakota's open records laws, it will not disclose any non-public confidential information of the other party to any person, and that, upon termination of this Agreement and the written request of the disclosing party, the receiving party will promptly turn over to the disclosing party all confidential information and other documents, papers and other matter in receiving party's possession or under its control that relate to the disclosing party's confidential information.

#### ***COPYRIGHTS***

University acknowledges that the services provided hereunder may include information, communications, code, software, photos, texts, video, graphics, sounds, images, logos and other material and services (collectively the "Content") that are owned, provided and maintained by ED Tech or its affiliates. The Content is protected by copyrights, trademarks and proprietary rights. University may not copy, reproduce, distribute, or create derivative works from the Content. ED Tech and its affiliates retain all rights not expressly granted. Furthermore, University represents, to the best of its knowledge, information, and belief, that all materials and the copyright therein, including but not limited to text, graphics, photos, designs, illustrations, audio clips, data, trademarks, or other artwork, information, content, or material (whether written, graphic, sound or otherwise) furnished to ED Tech by University for use by ED Tech in connection with the services performed by ED Tech hereunder are owned by University, or that University has permission from the rightful owner to use each of these elements. University's liability for

third party claims of intellectual property infringement shall be as set forth in the section entitled Liability and Default, above. ED Tech will maintain all of the appropriate licenses, contracts, and copyrights from participating educational experts in order to use ED Tech's materials in ED Tech courses.

***WARRANTY OF ORIGINALITY, NON-INFRINGEMENT***

ED Tech represents and warrants that any and all content and/or presentations supplied, performed, and/or displayed by ED Tech hereunder, inclusive of PowerPoints, handouts, and all other audiovisual and media elements, shall be (a) original to ED Tech; (b) appropriately licensed from one or more third-parties holding exclusive rights therein; or (c) used subject to a bona fide and good faith belief that an exception to third-party exclusive rights (e.g., fair use) applies, provided that such belief shall not negate any indemnification obligation imposed upon ED Tech herein. ED Tech disclaims all warranties, either express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose and noninfringement not otherwise herein provided by ED Tech. ED Tech makes no representation or warranty as to, nor does it guaranty, the performance of any ED Tech personnel that may perform services appurtenant to this agreement.

***INSURANCE***

Each party will maintain an amount of insurance that it determines to be adequate to cover any liabilities that may arise out of its performance of this Agreement. For its part, University's participation in the North Dakota risk management fund shall be deemed sufficient to comply with this paragraph.

***NOTICES***

Any official notice between the parties shall be in writing and addressed to the other party's administrative contact as follows:

**UNIVERSITY**

Lynette Krenelka, Ph.D.  
Executive Director, TTaDA  
Office of Extended Learning  
University of North Dakota  
221 Centennial Drive Stop 9021  
Grand Forks, ND 58202-9021  
Fax: 701-777-4282  
Phone: 701-777-4883  
Email: [lynette.krenelka@und.edu](mailto:lynette.krenelka@und.edu)

**ED TECHNOLOGY SPECIALISTS, INC.**

Mallack Walsh  
Owner  
ED Technology Specialists, Inc.  
PO Box 16  
Rocky Point, NY 11778

Phone: [REDACTED]

Email: [REDACTED]

All written notices, requests, demands, claims and other communications hereunder shall be deemed duly given (a) if by personal delivery, when so delivered, (b) if mailed to the addresses first set forth above, upon receipt or rejection as recorded in the U.S. Postal Service records after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (c) if sent through an overnight delivery service in circumstances to which such

service guarantees next day delivery, the day following being so sent. Any party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other parties notice in the manner herein set forth. The provisions of this section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court shall govern.

#### **MISCELLANEOUS**

If any covenant should be deemed invalid, illegal or unenforceable because its scope is considered excessive, such covenant shall be modified so that the scope of the covenant is reduced only to the minimum extent necessary to render the modified covenant valid, legal and enforceable. This document constitutes the final, complete, and exclusive embodiment of the entire agreement and understanding between the parties related to the subject matter hereof and supersedes and preempts any prior or contemporaneous understandings, agreements, or representations by or between the parties, written or oral. This Agreement may be executed on separate counterparts, by facsimile or other electronic means, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same agreement. This Agreement is intended to bind and inure to the benefit of and be enforceable by each party hereto, and their respective successors and assigns. No amendments or other modifications to this Agreement may be made except by a writing signed by both parties.

In Process

**\*\*\*BALANCE OF PAGE INTENTIONALLY LEFT BLANK\*\*\***

**IN WITNESS WHEREOF**, this Agreement has been executed by each of the undersigned and is effective as of the Effective Date. This Agreement may be executed and returned by facsimile, or by other electronic means, and such execution and delivery shall be binding as if an original had been delivered, and the delivering party covenants and agrees that an original will be sent immediately thereafter by regular mail. In addition, this Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

DocuSigned by:

*Lynette Krenelka*

4/27/2022

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Lynette M. Krenelka, PhD.  
Executive Director, TTaDA  
University of North Dakota

Date

Mallack Walsh  
Owner

Date

ED Technology Specialists, Inc.

DocuSigned by:

*Jeffrey Holm*

5/10/2022

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Jeffrey Holm, Ph.D., Vice-Provost  
Online Education & Strategic Planning  
Office of Academic Affairs  
University of North Dakota

Date

In Process