

## AGREEMENT TO OFFER ONLINE COURSES

THIS AGREEMENT TO OFFER ONLINE COURSES (Agreement) is entered into, as of \_\_\_\_\_ (the "Effective Date"), by and between Education To Go, a division of Cengage Learning, Inc., located at 5191 Natorp Blvd, Mason, OH 45040 ("ed2go") and Public Grove Adult School, located at 1025 Lighthouse Ave, Pacific Grove, CA 93950 ("Partner").

### RECITALS:

WHEREAS, Education To Go develops, designs, produces and distributes online educational courses and content for Web-based Training (WBT) and instruction delivered via the Internet;

WHEREAS, Partner is an academic, educational or other training institution or a business or community organization interested in offering online educational courses produced by Education To Go for Partner's students, trainees, members or employees (collectively "Students"); and

WHEREAS, Education To Go is willing to provide online educational courses to Partner for Students on the terms and conditions hereinafter contained,

NOW, THEREFORE, Partner and Contractor agree as follows:

#### 1. Courses and Course Types.

- a. At Partner's request, Education To Go will make available to Partner, to offer to Students, online education courses available through Education To Go, including course materials, online instructors, course hosting and evaluation (the "Courses"). Courses types include but may not be limited to (a) Fundamental Courses (Courses), (b) Courses comprising Career Training Programs (Programs), (c) Adult Online High School, and (d) My Time English. Each of such Course Types is more fully described on Exhibit A, B, C, and D respectively, attached hereto and made a part hereof. Partner shall indicate which Course Type Partner desires Education To Go to make available hereunder by so indicating on the respective exhibit(s). Courses within each Course Type are listed in Education To Go's catalog which is updated periodically as new Courses are announced and added to Education To Go's offerings. Education To Go reserves the right to cancel any Course or Course Type at any time pursuant to the terms of this Agreement.
- b. Partner may add and remove individual Courses within its current Course Types at its discretion. Removal of a Course shall not affect the remainder of this Agreement.
- c. Upon thirty (30) days' prior written notice to the other party, either party may notify the other that it will cease offering a Course Type. Any such notice shall specify which Course Type will be removed from the Course Type offerings. Removal of a Course Type shall not alter or affect any obligation of Partner to pay for Courses previously provided under this Agreement. Upon removal of a Course Type, Partner shall cease all marketing of the Courses within such Course Type and shall return to Education To Go all print materials, software, passwords, code and other information supplied by Education To Go, or a third party, in connection with the Courses which are within the removed Course Type. Removal of a particular Course Type hereunder shall not affect the remainder of this Agreement.

2. **Price and Payment.** Course prices to Partner, and payment terms, are set forth in Exhibits A and B. Prices charged to Partner by Education To Go are subject to change upon thirty (30) days' notice. Partner may determine its own prices to charge Students for Courses.

3. **Costs.** Education To Go shall be responsible for the costs incurred for producing and delivering the Courses via the Internet. The Students shall be responsible for any costs incurred for the purpose of receiving the Courses, including, but not limited to, the costs for hardware, software, Internet access and telephone charges.

4. **Ownership of Intellectual Property.** Education To Go shall retain all rights, including copyright, trade secret, patent, trademark, and other proprietary rights in the Courses and their contents, and all modifications, enhancements, and other works derivative thereof. Partner shall not acquire any rights, expressed or implied, in the Courses or their contents, or any modifications, enhancements or works derivative thereof, other than those rights identified in this Agreement. Education To Go shall retain all right, title and interest to all trademarks, trade names and logos used by Education To Go in association with the Courses. Partner shall not claim or receive any ownership rights to the Courses or such trademarks, trade names or logos. The Courses, or any portion thereof, may not be reproduced, duplicated, copied, sold, resold or otherwise exploited for any commercial purpose without the prior written consent of Education To Go.

5. **Partner Trademarks.** Partner agrees that, during the term of this Agreement, Education To Go may include Partner in Education To Go's partner listings and may place Partner's name and logo, if requested, on

- Education To Go's Online Instruction Center website and in collateral marketing materials relating to Education To Go's products and services. Partner hereby grants Education To Go the right to use Partner's trademarks (name and logo only) designated by Partner for such uses, subject to Partner's trademark/logo usage guidelines, if any, provided by Partner to Education To Go.
6. **Advertising.** Education To Go hereby grants Partner permission to use Education To Go's name and qualifications, its Course descriptions and the names, likenesses and biographies of its instructors in advertising and promoting the Courses.
  7. **Marketing Support.** Education To Go will provide Partner with marketing materials and assistance to promote Courses.
  8. **Taxes.** Partner shall be responsible for collecting applicable federal, state, local and other taxes applicable to its purchase, sale or use of the Courses.
  9. **Term and Termination.** This Agreement shall commence upon the Effective Date and shall continue until terminated hereunder. Either party may terminate this entire Agreement upon thirty (30) days' prior written notice to the other party. Termination does not alter or affect any obligation of Partner to pay for Courses previously provided under this Agreement. Upon the expiration or termination of this Agreement, Partner shall cease all marketing of the Courses and return to Education To Go all print materials, software, passwords, code and other information supplied by Education To Go, or a third party, in connection with the Courses or this Agreement. Partner will undergo an annual review by Education To Go support staff to verify program eligibility. Education To Go may terminate this Agreement if Education To Go determines that Partner is not offering a sufficient number of Courses, or Partner is not adequately supporting the Education To Go online program.
  10. **Confidentiality.** This Agreement and its terms, as well as Education To Go's wholesale pricing information and personal information of students, shall be deemed "Confidential Information". Each party agrees that it will take appropriate steps to protect the other party's Confidential Information from unauthorized disclosure, and that, except as may be required by legal process or rule or regulation, during the Term and for a period of two (2) years thereafter, it will not disclose the other party's Confidential Information to any third party, and that it will not use any of the other party's Confidential Information (other than as authorized by this Agreement) without the prior written consent of the other party. Each party agrees to take all reasonable steps to ensure that the other party's Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
  11. **Assignment.** This Agreement shall be binding upon the successors and permitted assigns of each party, but no assignment by either party shall be binding on either of the parties without the written consent of the other; provided, however, that Education To Go may assign this Agreement without the written consent of Partner to (i) an affiliate of Education To Go, (ii) any party acquiring a controlling share of the capital stock of Education To Go, or (iii) a successor to all or a substantial portion of the business of Education To Go (by way of a sale of assets or by merger, consolidation or otherwise).
  12. **Independent Contractors.** The term "Partner" as used herein shall be construed as figurative only and shall not imply or in any way suggest the existence or formation by this Agreement of a partnership, joint venture or any other relationship between the parties that imposes on either of them the legal duties or obligations of the other party. Each party hereto is an independent contractor, not an agent of the other party, and shall not have the ability to legally bind the other party.
  13. **Limitation of Liability.** Education To Go shall not be liable for defects in transmission, connectivity, Internet, Internet service provider, virus, interruptions, disruptions or delays, including those which may be caused by regulatory or judicial authorities. IN NO EVENT SHALL EDUCATION TO GO BE LIABLE IN ANY RESPECT, FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, ACTUAL, PUNITIVE DAMAGES, ARISING OUT OF THIS AGREEMENT OR ACTS OR OMISSIONS IN FULFILLING ITS OBLIGATIONS HEREUNDER.
  14. **Non-Exclusivity.** This Agreement does not give Partner exclusivity to any rights or privileges granted under this Agreement.
  15. **Force Majeure.** Except for the obligation to make payments hereunder, neither party shall be in breach of this Agreement by reason of a cause beyond such party's control, including, but not limited to, earthquake, flood, fire, storm or other natural disaster, acts of God, war or armed conflict.
  16. **Notices.** All notices and other communications under this Agreement must be in writing and will be deemed given (a) when delivered personally, (b) on the fourth business day after being mailed by certified mail, return receipt requested, (c) the next business day after delivery to a recognized overnight courier, (d) upon confirmation of receipt by facsimile, or (e) upon confirmation of receipt by email.
  17. **Law Applicable.** This Agreement shall be interpreted according to the laws of the State of New York, without regard for such State's conflict of law rules.

18. **Enforceability; Offset.** If any provision contained in this Agreement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of that provision in every other respect and the remaining provisions of this Agreement shall not be in any way impaired. Any amounts owed Education To Go by Partner under this Agreement or otherwise may be offset against amounts owed by Education To Go to Partner.
19. **Waivers and Amendments.** Any waiver of any term or condition of this Agreement, or any amendment or supplement to this Agreement, shall be effective only if in writing and signed by the parties. In the event of a conflict between a provision of an amendment to this Agreement and the body of this Agreement, the provision contained in the amendment shall prevail. A waiver of any breach or failure to enforce any terms or conditions of this Agreement shall not in any way affect, limit or waive any other term or provision or a party's rights under this Agreement at any time to enforce strict compliance thereafter with every term or condition of this Agreement.
20. **Entire Agreement.** This Agreement, including any addenda and exhibits attached hereto and made a part hereof, comprises the entire agreement and understanding of the parties regarding the subject matter hereof and supersedes any and all prior and contemporaneous agreements and understanding, whether oral or written, between the parties regarding such subject matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by either party, or by anyone acting on the behalf of either party, which are not embodied herein.
21. **No Third Party Rights.** Nothing contained in this Agreement is intended or shall be construed to give any person, other than the parties hereto, any legal or equitable right, remedy or claim under this Agreement or any provision contained herein other than as specified in this Agreement.
22. **Counterparts.** This Agreement may be executed in any number of counterparts. Each counterpart shall be deemed to be an original instrument, but all counterparts together shall constitute but one agreement. A counterpart of this Agreement signed and transmitted by facsimile or other electronic means shall be treated as an original, executed document.
20. **Entire Agreement.** This Agreement, including any addenda and exhibits attached hereto and made a part hereof, comprises the entire agreement and

IN WITNESS WHEREOF, the authorized signatories of each party hereto have executed this Agreement as of the date first above written.

**EDUCATION TO GO**

**INSTITUTION**

By:

By:

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

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

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

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

## COURSE TYPE: EDUCATION TO GO FUNDAMENTAL COURSES

Education To Go will make available to Partner to offer to Students the Fundamental Courses (each a "Course"), including course materials, online facilitators (where applicable), course hosting and evaluation. Education To Go will host the courses on Education To Go's website through a portal accessed through Partner's own website. Partner's online account will be established by Education To Go and reviewed by the Partner for final approval. An Online Instruction Center, Online Administration Center and Classroom will be created for Partner's account.

- 1. Price.** The price to Partner of each Fundamental Course is indicated on the Price List Addendum, which is attached hereto and made a part of this Exhibit A. Partner may determine its own fees charged Students for Fundamental Courses.
- 2. Payment.** Processing student enrollments and collection of Course fees from students shall be the responsibility of Education To Go unless Partner chooses to enroll students and collect Course fees. If Education To Go processes students enrollments and collects Course fees, Partner's share will be sent by Education To Go to Partner as a check. If Partner processes student enrollments and collects Course fees, the price of each Course to Partner shall be paid by Partner to Education To Go at P.O. Box 936743, Atlanta, GA 31193-6743, within thirty (30) days of the date of invoice. Dated invoices will be first submitted after commencement of Course.
- 3. Refunds.** Enrollments for Instructor Facilitated Fundamental Courses can be dropped and refunded after enrollment, but before completion, only if that Student explains in writing his or her dissatisfaction with the Course and provided that the drop and refund are completed in conformity with Partner's stated drop and refund policies. Failure of the Student to drop the Course in conformity with these policies shall nullify Education To Go's obligation to pay the refund hereunder. Partner will provide Education To Go with a copy of Partner's stated add/drop and refund policies. Education To Go may, at its discretion, append a copy of said policies to the Course materials in a place and in a manner that Education To Go deems appropriate. In no event shall a Student, either directly or through Partner, be entitled to drop a Course and thereby claim a refund after Education To Go certifies or provides proof of the Student's successful completion of the Course.

Education To Go Online Fundamental Courses (Exhibit A)

Accept \_\_\_\_\_ Decline \_\_\_\_\_

## COURSE TYPE: ADVANCED CAREER TRAINING PROGRAMS

Education To Go will make available to Partner to offer to its students the Advanced Career Training Program courses (each a "Course") available, including course materials, online facilitators, course hosting and evaluation. Education To Go will host the Courses on Education To Go's website through a portal accessed through Partner's own website.

- Price.** The price to Partner of each Course comprising part of an Advanced Career Training Program is indicated on the Price List Addendum, which is attached hereto and made a part of this Exhibit B. Partner may determine its own fees charged students for each Course comprising part of an Advanced Career Training Program.  
processes student enrollments and collects Course fees, the price of each Course to Partner shall be paid by Partner to Education To Go at P.O. Box 936743, Atlanta, GA 31193-6743, within thirty (30) days of the date of invoice. Dated invoices will be first submitted after commencement of Course.
- Payment.** Processing student enrollments and collection of Course fees from students shall be the responsibility of Education To Go unless Partner chooses to enroll students and collect Course fees. If Education To Go processes students enrollments and collects Course fees, Partner's share will be sent by Education To Go to Partner as a check. If Partner
- Refund Policy.** Once a Student requests Advanced Career Training Program materials or begins viewing a Course, no refunds will be granted.
- Certificates of Completion.** Partner will timely deliver a Certificate of Completion to any Student successfully completing a Career Training Program.

Courses Comprising Advanced Career Training Programs (Exhibit B)

Accept \_\_\_\_\_ Decline \_\_\_\_

## Implementation Fee

The partner shall pay Education To Go the agreed upon implementation fee for performing the Implementation Services, as set forth or referred to in this Exhibit C (the Implementation Fee).

**Implementation fee.** Upon execution of this agreement, Partner will be invoiced a non-refundable implementation fee of \$5,000. Implementation Services will include a branded enrollment portal, staff training, access to student rosters and enrollment data, and access to marketing templates for program promotion.

**Implementation Fee (Exhibit C)**      **Accept** \_\_\_\_\_ **Decline** \_\_\_\_\_