

Overview of the Example Business Agreement

Scaling Curriculum Based Professional Learning Project works to expand access to bundled products and services by fostering partnerships between curriculum publishers and professional learning (PL) providers. The project team facilitates these complex partnerships while addressing concerns related to intellectual property, data sharing, and business agreements.

To support partners in formalizing business agreements, the project team provides templates or examples, such as the included business agreement example, that partners may use as a resource. A business agreement is required as part of the phase 1 contract deliverables. For more detailed information on how your RTI liaison will support in the business agreement process please refer to the [CBPL Steps for Business Agreement Support](#).

This example is offered as a convenience and does not constitute legal advice.

BUSINESS AGREEMENT

This Business Agreement (“**Agreement**”) is entered into this ____ day of ____, 20__ (the “**Effective Date**”) between Publisher, Inc., using the trade name of ____, located at ____, (“**Publisher**” or “**Licensor**”) and Professional Learning Provider, Inc., located at ____ (“**PL Provider**” or “**Licensee**”). Collectively, Publisher and PL Provider are hereinafter referred to as “the Parties” and individually as a “Party.” Either of Publisher or PL Provider may be referred to herein as a “**Party**”, and Publisher and PL Provider may be collectively referred to herein as the “**Parties.**”

INTRODUCTION

Publisher desires to license the Licensed Intellectual Property (defined below) for the purposes permitted by this Agreement and PL Provider is willing to grant such license under the terms hereof.

STATEMENT OF AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual promises and covenants contained in this Agreement and for good and valuable consideration, it is agreed by and between Publisher and PL Provider as follows:

ARTICLE 1 : DEFINITIONS

1.1 “Affiliate” means every entity, that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with PL Provider. An entity is deemed to be in control of another corporation or entity if (a) it owns or directly or indirectly controls at least 50% of the voting stock of the other corporation or (b) in the absence of ownership of at least 50% of the voting stock of a corporation, or in the case of a non-corporate entity, if it possesses directly or indirectly, the power to direct or cause the direction of the management and policies of such entity.

1.2 “Confidential Information” means any information disclosed by one Party to the other Party that is identified as confidential at the time of disclosure, or would reasonably be considered confidential given the nature of the information and the context of disclosure including information consisting of data; research results; technology; software; materials; unpublished patent applications; copyrighted works; know-how; business or product plans; marketing, sales or other financial information; and Sales Reports.

1.3 “Derivative Work” means any work that is based upon one or more preexisting works, such as a revision, modification, translation, abridgment, condensation, expansion, or any other form in which the preexisting work may be recast, transformed, or adapted.

1.4 “Field of Use” means, and is limited to, the use or practice of the Licensed Intellectual Property for developing and delivering teaching and learning content for grades 6 through 8.

1.5 “Licensed Intellectual Property” means curriculum materials owned or controlled by Licensor that are conveyed to Licensee under the terms hereof including without limitation the following:



- (i) Textbooks: Printed or digital books used as primary sources for teaching and learning;
- (ii) Workbooks: Supplementary books containing exercises and activities aligning with the curriculum;
- (iii) Instructional Guides: Materials designed to help educators deliver lessons effectively;
- (iv) Assessment Tools: Tests, quizzes, and other evaluation instruments;
- (v) Multimedia Resources: Audio, video, and interactive content supporting the curriculum;
- (vi) Online Courses: Web-based modules and lessons available through educational platforms; and
- (vii) Teacher Training Materials: Resources intended to enhance educators' skills and knowledge.

1.6 “Licensed Products” means any product that infringes Licensed Intellectual Property, including without limitation Derivative Works.

1.7 “Licensed Territory” means, and is limited to, New York and California.

1.8 “Revenue Share Report” means a written report detailing the number, description, aggregate selling prices, and Net Sales of Licensed Products sold, provided or otherwise disposed of by the PL Provider or its Affiliates in each calendar year upon which revenue share is payable, and the revenue share payment amounts due under **Section 3.2**.

1.9 Other Definitional Provisions.

- (i) The words **“hereof”**, **“herein”** and **“hereunder”** and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section, schedule and exhibit references are to this Agreement unless otherwise specified. The meaning of defined terms shall be equally applicable to the singular and plural forms of the defined terms. The term **“including”** is not limiting and means **“including without limitation”**.
- (ii) In the computation of periods of time from a specified date to a later specified date, the word **“from”** means **“from and including”**; the words **“to”** and **“until”** each mean **“to but excluding,”** and the word **“through”** means **“to and including.”**
- (iii) References to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement.
- (iv) References to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

- (v) The captions and headings of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

ARTICLE 2 : GRANT OF LICENSE

2.1 Grant to PL Provider. Publisher hereby grants to PL Provider and its Affiliates to the extent of the Licensed Territory a non-exclusive license under the Licensed Intellectual Property to use, reproduce, distribute, modify, sell, have made, have sold, and offer for sale Licensed Products in the Field of Use subject to all the terms and conditions of this Agreement.

2.2 No Implied Rights. Any rights not expressly granted to PL Provider shall be retained by Publisher.

ARTICLE 3 : CONSIDERATION

3.1 Revenue Sharing. Both partners share responsibility for bundled sales of Licensed Products while maintaining separate financial outcomes.

- (i) Publisher: Retains revenue generated from the sale of instructional materials.
- (ii) PL Provider: Retains revenue generated from professional learning services.

3.2 PL Provider will collect payments from the client and distribute all payments to Publisher according to the above-stated revenue share plan within fifteen (15) days of receiving the payment.

3.3 Payment. All fees, royalties, and other payments due to Publisher under this Agreement shall be made in United States Dollars. If any currency conversion shall be required in connection with the payment of royalties hereunder, such conversion shall be made using the exchange rate published in the Wall Street Journal on the last business day of the calendar quarterly reporting period to which such revenue share payments relate.

3.4 Late Payment. In the event revenue share payments or fees are not received by Publisher when due, PL Provider shall pay to Publisher default interest on such unpaid amount at a rate equal to interest and charges at the lower of (a) five percent (5%) above the then-current prime lending rate as published by the American East Coast edition of the Wall Street Journal or (b) the maximum rate of interest allowed by law on the total royalties or fees overdue.

3.5 Default Payment. In the event of default in payment of any payment owing to Publisher under the terms of this Agreement, and if it becomes necessary for Publisher to undertake legal action to collect said payment, PL Provider shall pay reasonable, documented legal fees and costs incurred by Publisher in connection therewith.

ARTICLE 4 : REPORTS AND RECORDS

4.1 PL Provider shall submit Revenue Share Reports on or before _____ of each calendar year after the Effective Date and continuing throughout the Term.

4.2 PL Provider shall keep complete, true and accurate books of account and records for the purpose of showing the derivation of all amounts payable to Publisher under this Agreement. Such books and records shall be kept at PL Provider's principal place of business during the term of this Agreement and for three (3) years from the date of the last sale of Licensed Product and shall be open at all reasonable times for inspection by a representative of Publisher for the purpose of verifying PL Provider's revenue share statements or PL Provider's compliance in other respects with this Agreement. The Publisher representative shall be obliged to treat as confidential all relevant matters.

4.3 Inspections made under **Section 4.2** shall be at the expense of Publisher, unless an underpayment to Publisher under this Agreement exceeding the greater of (i) five thousand dollars (\$5,000) or (ii) five percent (5%) of the amount properly due with respect to the audited period is discovered in the course of any such inspection, whereupon all reasonable, documented costs relating thereto shall be paid by PL Provider. PL Provider shall promptly pay to Publisher the full amount of any such underpayment, together with interest thereon as specified in **Section 3.4**.

ARTICLE 5: MILESTONES AND ROLES AND RESPONSIBILITIES

5.1 Within the first twelve (12) months, the Parties PL Provider will use best efforts to achieve each of the following objectives:

- (i) Complete development of co-bundled offering and marketing materials by six (6) months after the Effective Date, and
- (ii) Complete the sale of at least 1 bundled curriculum and professional learning offering by twelve (12) months after the Effective Date.

5.2 If the Parties fail to meet the above milestones, ...

ARTICLE 6 : TERM AND TERMINATION

6.1 The license granted pursuant to **Section 2.1** is for a term beginning on the Effective Date and, unless terminated sooner as herein provided, extending to the third (3rd) anniversary of the Effective Date ("Initial Term"). Either Party may terminate for convenience within sixty (60) days prior to the end of the Initial Term. If neither Party exercises such right of termination for convenience, the Term will be automatically extended for an additional one-year period. Either Party may terminate for convenience within sixty (60) days prior to the end of this or any subsequent one-year period, and if not, the Term will be automatically extended for an additional one-year period.

6.2 Either Party may terminate for default if any one or more of the following events occurs and remains uncured for fifteen (15) calendar days following written notice thereof:

- (i) any material misrepresentation by either Party, or any failure by either Party to perform any of its material obligations;
- (ii) a Party improperly attempts to assign the Agreement; or

- (iii) a Party ceases to do business, dissolves or liquidates its business, becomes insolvent or bankrupt, or is placed in receivership or trusteeship.

6.3 It is expressly agreed that, notwithstanding any other provisions of this Agreement, if PL Provider should materially breach this Agreement and fail to cure any such breach within thirty (30) calendar days of receipt of written notice from Publisher describing such breach, Publisher hereby has the right to terminate this Agreement. A material breach is a material violation of, or material failure to keep or perform any covenant, condition, or undertaking of this Agreement, including, but not limited to PL Provider's:

- (i) failure to deliver to Publisher any payment at the time or times that such payment is due to Publisher under this Agreement,
- (ii) failure to provide Revenue Share Reports as set forth in **Article 4**, or
- (iii) failure to possess and failure to maintain insurance as set forth in **Section 8.2**.

6.4 Upon termination of this Agreement or upon termination in whole or in part:

(i) PL Provider shall provide Publisher with a written inventory of all Licensed Products in the possession or under the control of PL Provider (including any in the process of manufacture). Except with respect to termination for uncured material breach pursuant to **Section 6.3**, PL Provider shall have the privilege of disposing of the inventory of such Licensed Products within a period of one hundred and eighty (180) days of such termination upon conditions most favorable to Publisher that PL Provider can reasonably obtain.

(ii) PL Provider shall also have the right to complete performance of all contracts for sale of Licensed Products (except in the case of termination for uncured material breach pursuant to **Section 6.3**) or Licensed Products within and beyond said period of one hundred and eighty (180) days, provided that PL Provider's right to continue performance under any such contract shall not exceed one year. All Licensed Products in the possession or under the control of PL Provider (including any in the process of manufacture) which are not disposed of as provided above shall, to the extent permitted by applicable law, be delivered to Publisher or otherwise disposed of in compliance with all applicable laws, in Publisher's reasonable discretion, and at PL Provider's sole expense.

6.5 Any termination or cancellation under any provision of this Agreement shall not relieve PL Provider of its obligation to pay any revenue share or other fees (including without limitation attorney's fees, where applicable) due to Publisher at the time of such termination or cancellation.

ARTICLE 7 : REPRESENTATIONS

7.1 Each Party represents and warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.

7.2 Publisher represents that, to its knowledge, as of Effective Date, (i) the entire right, title, and interest in the Licensed Intellectual Property existing on the Effective Date have been assigned to Publisher free and clear of all liens, claims and encumbrances of any creator, employee, or any third party, (ii) that Publisher has all requisite power and authority to grant the licenses contained in this Agreement, and (iii) Publisher's execution and performance of this Agreement will not result in a breach of any other contract to which it is, or will become, a party.

7.3 Publisher DISCLAIMS ALL WARRANTIES WITH REGARD TO PRODUCT(S) AND SERVICE(S) LICENSED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ALL WARRANTIES, EXPRESSED OR IMPLIED, OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, Publisher ADDITIONALLY DISCLAIMS ALL OBLIGATIONS AND LIABILITIES ON THE PART OF Publisher FOR DAMAGES, INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, SPECIAL, AND CONSEQUENTIAL DAMAGES, ATTORNEYS' AND EXPERTS' FEES, AND COURT COSTS (EVEN IF Publisher HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FEES OR COSTS), ARISING OUT OF OR IN CONNECTION WITH LICENSEE'S USE, OR SALE OF THE PRODUCT(S) AND SERVICE(S) LICENSED UNDER THIS AGREEMENT, EXCEPT TO THE EXTENT SUCH DAMAGES OR OTHER LIABILITIES RESULT FROM THE Publisher'S OR ITS EMPLOYEES' INTENTIONAL MISCONDUCT.

7.4 EXCEPT WITH RESPECT TO BREACHES OF **ARTICLE 9** AND THE INDEMNIFICATION PROVIDED UNDER **ARTICLE 8**, NEITHER PARTY SHALL BE ENTITLED TO RECOVER FROM THE OTHER PARTY ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT.

ARTICLE 8 : INDEMNIFICATION

8.1 In exercising its rights under this Agreement, PL Provider shall comply with the requirements of all applicable laws, regulations, rules and orders of any governmental body having jurisdiction over the exercise of rights under this Agreement. PL Provider further agrees to indemnify and hold Publisher harmless from and against any costs, expenses, attorney's fees, citation, fine, penalty and liability of every kind and nature which might be imposed by reason of any asserted or established violation by PL Provider or Affiliates of any such laws, order, rules and/or regulations.

8.2 PL Provider is required to maintain in force at its sole cost and expense, with reputable insurance companies, general liability insurance and products liability insurance coverage in an amount reasonably sufficient to protect against liability under **Section 8.1** above.

8.3 LICENSEE'S OBLIGATIONS TO COMPLY WITH U.S. LAWS AND REGULATIONS, INCLUDING WITHOUT LIMITATION U.S. EXPORT CONTROL LAWS AND REGULATIONS, ARE INDEPENDENT OF AND SURVIVE THE TERMINATION OF THIS AGREEMENT. PL Provider agrees to indemnify and hold Publisher harmless from and against any liability (including fines or legal fees) incurred by violations of such laws and regulations by PL Provider or PL Provider's Affiliates with respect to Licensed Products.

ARTICLE 9 : CONFIDENTIALITY; PUBLICATION

9.1 **Confidential Information.** Either Party (as a “Disclosing Party”) may, from time to time, disclose its Confidential Information to the other Party (as a “Receiving Party”). The Receiving Party shall not disclose the Disclosing Party’s Confidential Information to any third party except as follows:

- (i) to its Affiliates and any employees, officers, directors, contractors, or other agents or representatives of the Receiving Party or any of the foregoing for purposes related to the exercise of the rights granted under this Agreement; or
- (ii) under conditions of confidentiality to prospective or actual investors, lenders, acquirors, strategic partners, and investment bankers in connection with its financing, acquisition, licensing, development, commercialization, and stockholder relations activities; or
- (iii) with the prior written consent of the Disclosing Party;

provided that, the Receiving Party requires such recipients of the Disclosing Party’s Confidential Information to protect the confidentiality of such Confidential Information.

9.2 **Limits on Confidential Information.** Confidential Information under this Agreement shall not include information which:

- (i) at the time of disclosure is in the public domain;
- (ii) after disclosure, becomes part of the public domain by publication or otherwise, except by the breach of this Agreement by either Party;
- (iii) was (a) in the Receiving Party’s possession in documentary form at the time of disclosure or (b) independently developed by or for the Receiving Party by any person or persons who had no knowledge or benefit of the Disclosing Party’s Confidential Information, as evidenced by written documentation; or
- (IV) a Receiving Party received without obligation of confidentiality or limitation on use from a third party who had the lawful right to disclose such information and who did not obtain such information under an obligation of confidentiality to the Disclosing Party.

Confidential Information disclosed under this Agreement shall not be deemed to be within the foregoing exceptions merely because such information is embraced by more general information in the public domain or in the possession of a Party. In addition, any combination of features shall not be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in the Party’s possession, but only if the combination itself and its principle of operation are in the public domain or in the Party’s possession.

9.3 Upon termination, each Party will cease using any Confidential Information of the other Party, but a Receiving Party’s obligations of confidentiality under this **Article 9** with respect to the Disclosing Party’s Confidential Information shall continue for five (5) years thereafter.

9.4 Notwithstanding any other provision of this Agreement, disclosure by a Receiving Party of the Disclosing Party’s Confidential Information shall not be precluded if such disclosure:

- (i) is in response to a valid order of a court or to another governmental body of the United States or any political subdivision thereof; or
- (ii) is required by law or regulation;

provided, however, that, in either case, the Party required to make such disclosures shall (1) have made reasonable effort to give prompt notice to the Disclosing Party to permit it to seek a protective order or grant of confidentiality, (2) cooperate with the Disclosing Party's efforts to seek confidential or protective treatment of such information, as reasonably requested by the Disclosing Party, and (3) minimize the extent of any such disclosure.

ARTICLE 10 : MISCELLANEOUS

10.1 This Agreement is binding upon and shall insure to the benefit of Publisher, its successors and assigns. However, this Agreement shall be personal to PL Provider, and it is not assignable by PL Provider to any other person or entity without the prior written consent of Publisher, such consent to be in Publisher's sole discretion. Notwithstanding the foregoing, PL Provider shall be free to assign this Agreement and its rights and obligations hereunder without Publisher's consent (i) to any Affiliate or (ii) in connection with any sale of substantially all of PL Provider's assets or business (or that portion of its assets or business related to the subject matter of this Agreement), merger, acquisition, consolidation, reorganization, or other similar transaction, provided that PL Provider shall not be released of its obligations existing at the time of such assignment.

10.1 It is agreed that no waiver by either Party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent and/or similar breach or default.

10.2 No Party shall, without prior written consent of the other Party, use the name or any trademark or trade name owned by the other Party, or owned by an affiliate or parent corporation of the other Party, in any publication, publicity, advertising, or otherwise, except that PL Provider may identify Publisher as licensor of the Licensed Intellectual Property and Publisher may identify PL Provider as licensee of the Licensed Intellectual Property. Neither Party will undertake or support any action to challenge the other Party's ownership in its marks or take any acts that would jeopardize or diminish the other Party's trademarks or service marks, including without limitation any intellectual property rights therein.

10.3 Notwithstanding **Section 10.3** above, Publisher may disclose the existence of this Agreement and non-confidential information regarding the status of PL Provider's commercialization of License Products in a press release, on-line, or otherwise, and on its website throughout the life of this Agreement with the prior written approval of the PL Provider, such approval not to be unreasonably withheld. Further, the Parties agree to cooperate with each other in preparing, reviewing and approving such disclosures, PL Provider's approval for each disclosure not to be unreasonably withheld.

10.4 The Parties are independent contractors, and neither Party hereto shall not act as an agent for the other, nor shall either be deemed to be an employee of the other for any purpose whatsoever. Neither Party shall enter into any agreement or incur any obligations of the other's behalf, or commit the other in any manner without the other Party's prior written consent

10.5 Any notice required or permitted to be given to the Parties hereto shall be in writing and deemed to have been properly given if delivered in person or mailed by first-class mail to the other Party at the appropriate address as set forth below. Other addresses may be designated in writing by the Parties during the term of this Agreement.

For license compliance matters:

Publisher:

PL Provider:

For revenue share reporting/payment matters:

Publisher:

PL Provider:

ARTICLE 11 : GENERAL TERMS

11.1 This Agreement, and any and all claims, controversies, and causes of action arising out of or relating to this Agreement will be governed solely by the internal laws of the State of _____, including without limitation its statutes of limitations and any applicable federal law, and without reference to any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties.

11.2 Neither Party to this Agreement shall be liable for its failure to perform hereunder due to circumstances beyond its reasonable control, or if performance hereunder is prevented, restricted or interfered with by reason of any acts of war, riot, insurrection, fire, flood, tornado, natural calamity, act of God, compliance with any law, regulation or order, whether valid or invalid, of the United States of America or any other governmental body, strike or other labor activities, shipping or transport delays, materials or labor shortage, or accident or plant breakdown not caused by the fault or neglect of a Party, then that Party shall be excused from such performance to the extent of the "force majeure." The Party so affected shall give prompt notice to the other Party, by any method appropriate under the circumstances. The Party so affected shall use its reasonable efforts to avoid, mitigate or remove the "force majeure," and shall further use its reasonable efforts to complete full performance of this agreement when such causes are removed or mitigated.

11.3 Unless approved in writing by the other Party, neither Party shall directly solicit employees of the other to undertake employment with it, or any Affiliate during the performance of this Agreement and for a period of one (1) year thereafter. Direct solicitation does not include: (i) responding to advertisements in the general media; (ii) submission of resumes through a Party's web site; and/or (iii) submission of resumes while attending a Party's job fair, and, except to the extent an individual was specifically encouraged to respond to such advertisements or apply for such employment, there shall not be a restriction on the hiring of individuals so responding.

11.4 The provisions of **Sections 3.3, 3.4, 3.5, 6.4, 6.5, 7.3 and 7.4**, and **Articles 1, 4, 8, 9 and 10** shall survive the expiration or termination of this Agreement.

11.5 PL Provider shall be solely responsible for the payment of all taxes, fees, duties and other payments incurred in relation to its manufacture, use and sale of Licensed Products. PL Provider shall, as between the Parties, be responsible for applying for and obtaining any approvals, authorizations, or validations necessary to effectuate the terms of this Agreement under the laws of the appropriate national laws of each of the countries in the Licensed Territory.

11.6 If any one or more of the provisions of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering into this Agreement may be realized.

11.7 It is understood and agreed between Publisher and PL Provider that this writing constitutes the entire agreement, both written and oral, between the Parties, and that all prior agreements respecting the subject matter hereof, either written or oral, expressed or implied, shall be abrogated, cancelled, and are null and void and of no effect.

[Signature page to follow.]

IN WITNESS WHEREOF, both Publisher and PL Provider have executed this Agreement, in duplicate originals, by their duly authorized respective officers.

Publisher:

PL Provider:

By: _____
Name:
Title:

By: _____
Name:
Title: