

# Memorandum of Understanding (MOUs)

## Introduction

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 and data sharing.

To support partners in formalizing agreements, the project team provides template documents, such as the MOU, that partners may use or adapt as needed. These templates are offered as a convenience and do not constitute legal advice. Partners are responsible for reviewing and modifying these documents to meet their specific needs and should seek independent legal counsel as necessary.

# Memorandum of Understanding Template

## Introduction

- 1.1 This Memorandum of Understanding ("MOU") is made on \_\_\_\_\_ (the "Effective Date") between **PARTY A**, a \_\_\_\_\_ corporation/entity/institute of higher learning with offices at \_\_\_\_\_, ("**PARTY A**") and **PARTY B**, a \_\_\_\_\_ corporation/entity/institute of higher learning with offices at \_\_\_\_\_, ("**PARTY B**"). Collectively, PARTY A and PARTY B are hereinafter referred to as "the Parties" and individually as a "Party."
- 1.2 PARTY A is a \_\_\_\_\_ organized under the laws of the state of \_\_\_\_\_ dedicated to \_\_\_\_\_.
- 1.3 PARTY B is a \_\_\_\_\_ organized under the laws of the state of \_\_\_\_\_ dedicated to \_\_\_\_\_.

Therefore, the Parties have expressed interest in pursuing future collaborative efforts in the areas described below:

## Purpose and Objectives

- 2.1 The purpose of this MOU is to establish the following general common objectives to be achieved by the Parties:
- a) Jointly develop \_\_\_\_\_ for the purpose of \_\_\_\_\_ requiring, or better facilitated by, the joint activities of the Parties.
  - b) Negotiate in good faith \_\_\_\_\_ agreements supporting such joint development.
  - c) Negotiate in good faith definitive license agreements supporting commercialization of new, proprietary products and services introduced into the joint development by each Party.
  - d) Share and protect each other's Proprietary Information in accordance with the terms of section 8 hereof and in accordance with bilateral non-disclosure agreements signed between the Parties, to be executed of approximately even date herewith.

## Areas of Collaboration

- 3.1 After the execution of this MOU, the Parties will, without limitation, engage in discussions to explore the scope and details for the following collaborative efforts:

- a) Explore opportunities to create bundled products and services, specifically \_\_\_\_\_.
- b) Identify school districts to co-market the bundled products and services.
- c) Prepare and submit proposals to school districts.
- d) If the proposal is funded, \_\_\_\_\_.
- e) Explore opportunities to scale professional learning through digital media.

## ACTIVITIES

- 4.1 The Parties will engage in the following activities during the term of this MOU in order to facilitate their pursuit of the above areas of collaboration:
- a) The terms of collaboration will be enforceable only to the extent of signed written agreements binding all Parties.
  - b) Unless otherwise expressly agreed by the Parties, the only financial obligations between the Parties are those defined by the contracts and subcontracts associated with the Parties' execution of the awarded project. For clarity, all expenses incurred by any Party under this MOU will be at such Party's sole expense.

## DURATION & TERMINATION

- 5.1 The term of this MOU shall be for \_\_\_\_\_ (\_\_) months from the Effective Date. This MOU may be terminated at any time by any Party, with or without cause, with at least thirty (30) business days' prior written notice of such termination to the other Parties provided that termination does not interfere with a Party from fulfilling contractual obligations associated with the awarded \_\_\_\_\_ project.

## NON-EXCLUSIVITY

- 6.1 Subject to restrictions on the use of the other Party's Proprietary Information, the Parties hereby acknowledge that this MOU is not exclusive, and that each Party may freely contract with any other person or entity for any purpose including, but not limited to, the subject matter herein. Nothing in this MOU shall be construed as superseding or interfering in any way with other agreements or contracts entered into by the Parties prior to or during the term of this MOU.

## RELATIONSHIP OF THE PARTIES AND USE OF NAME

- 7.1 Except to the extent expressly provided herein including without limitation the restrictions on the use of Proprietary Information, this MOU is not intended to be legally binding and does not create any contractual, financial, or other legal obligations on any Party, nor will the Parties be subject to any legal liability resulting from non-performance of any provisions of this MOU. Accordingly, this MOU is not intended to constitute a binding agreement to consummate any transaction or collaborative effort. Any obligation or liability to be undertaken by any Party will require and must be set forth in a separate and subsequent definitive agreement, in writing, executed by individuals duly authorized to bind each Party.
- 7.2 The relationship between the Parties is that of independent contractors. No Party, nor its agents or its employees, shall be deemed to be the agent of any other Party. As

independent entities, each Party assumes all responsibilities, liabilities, and obligations with respect to its employees, consultants, subcontractors, and other agents or representatives.

- 7.3 This MOU does not create a partnership, joint venture, or other type of legal entity, nor shall it be construed to interfere with or supersede other agreements the Parties may pursue. No Party may represent, operate on behalf of, or bind any other Party without such other Party's written consent by a duly authorized agent.
- 7.4 The Parties undertake to act in good faith with respect to each other, and to adopt reasonable measures to ensure the realization of the objectives of this MOU. The Parties agree not to create any financial or other obligations, make any commitments, take any positions on behalf of any other Party, or use the name, marks, or logos of that Party without that Party's specific, written consent by an individual duly authorized to bind the organization.

## Confidentiality

- 8.1 During the term of this MOU, it may be necessary for the Parties to disclose to each other certain technical, business, and/or trade secret information, which a Party regards as proprietary and of a confidential nature. All such information will be referred to as "Proprietary Information" and is defined as (1) all written information disclosed by the Parties hereto that is marked on its face as proprietary or confidential, and 2) all orally or visually disclosed information which, within 30 days after disclosure, is summarized and confirmed to the receiving Party, in writing, as proprietary or confidential. All disclosures of Proprietary Information between the Parties during the period of this MOU are subject to the terms, conditions, and obligations set forth below:
- 8.2 Each Party will maintain in confidence all Proprietary Information received from a disclosing Party hereunder and will not disclose said Proprietary Information to third parties without the prior written consent of the disclosing party. The term "third parties," includes, without limitation, the United States and Swiss Governments, which includes, without limitation, their respective patent offices.
- 8.3 No Party will make use of Proprietary Information received from a disclosing Party, other than for evaluation purposes relating to the potential pursuit of the objectives stated in this MOU, without the prior written permission of the disclosing Party.
- 8.4 Each Party receiving Proprietary Information under this MOU will be held to the same standard of care in protecting Proprietary Information as the receiving Party normally takes to preserve and safeguard its own proprietary information of a similar kind, but in no event less than reasonable care.
- 8.5 Each receiving Party will restrict disclosure of the disclosing Party's Proprietary Information within its organization to those persons having a need to know for purposes of this MOU, and such persons will be advised of the obligations set forth in this MOU and will be obligated in like manner.
- 8.6 The confidentiality obligations in this MOU will not apply to information which:

- a. at the time of disclosure is in the public domain as evidenced by publication or similar proof; or
  - b. after disclosure by the disclosing Party, becomes part of the public domain by publication or otherwise, other than by an unauthorized act or omission by the receiving Party constituting a default under this MOU; or
  - c. the receiving Party can show by competent proof was in its possession at the time of the disclosure and which was not acquired, directly or indirectly, from the other party to this MOU; or
  - d. the receiving Party rightfully received from a third party, and which was not acquired, directly or indirectly, from the other Party to this MOU; or
  - e. was developed by the receiving Party independently of any disclosure hereunder as shown by competent proof.
- 8.7 The receiving Party may disclose Proprietary Information pursuant to a valid order by a court or in order to prosecute or defend any claim arising hereunder, provided that the receiving Party provides prior written notice to the disclosing party of such obligation and the opportunity to oppose such disclosure.
- 8.8 Specific information will not be deemed to be within the exceptions set forth above merely because it is embraced by more general information within such exceptions, nor will a combination of features be deemed to be within such exceptions merely because the individual features are within such exceptions.
- 8.9 The Parties hereby agree that each of their respective officers, employees, agents, consultants or subcontractors who will be in a position to receive any Proprietary Information under this MOU will be subject to internal company policy restrictions prohibiting the disclosure of Proprietary Information or will have executed an employment contract protecting any and all such Proprietary Information from disclosure as stated herein.
- 8.10 Upon termination of this MOU, any receiving Party will return to the disclosing Party all complete or partial copies of Proprietary Information then in its possession or destroy and certify such destruction to the disclosing party, except the receiving Party may retain one archival copy of Proprietary Information as evidence of its obligations hereunder.
- 8.11 All transfers of information, including but not limited to Proprietary Information, under the terms of this MOU will at all times be subject to the export control and other applicable laws and regulations of the Respective Governments. Each Party agrees that it will not make any disposition, by way of trans-shipment, re export, diversion or otherwise, except as said laws and regulation may expressly permit, of information furnished under this MOU.
- 8.12 These obligations of confidentiality and non-disclosure will remain in effect for a period of five (5) years after the termination of this MOU.

## **Controlling Language and Law**

- 9.1 This MOU has been prepared and signed in the English language, which language shall be controlling in all respects. No translation, if any, of this MOU into the official language(s) of any Party or any other language shall be of any force or effect in the interpretation of

this MOU or in a determination of the intent of either of the Parties hereto. In the event of any conflict or inconsistency between the English language version and any translation hereof made for any purpose, the English language version shall govern the interpretation and construction hereof.

- 9.2 This MOU shall be construed in accordance with the laws of the United States of America, State of \_\_\_\_\_, without giving effect to its conflict of law provisions.

## **Amendments**

- 10.1 This MOU may only be modified in a written amendment executed by duly authorized representatives of each Party.

Each Party acknowledges that it has read this MOU, understands it, and agrees to its terms.

Name

Organization

Signature