



## AGREEMENT

This Agreement is made as set forth herein by and between the two 501 (c)(3) corporations, East Bay Career Pathways ("Support Recipient") and Alignment Nashville ("Support Provider") as a means for Support Provider to provide services to Support Recipient in furtherance of its not for profit ventures within the Peralta Community College District / Oakland, CA regional area.

### SECTION I

#### *Purpose and Scope of Work*

1.1 The purpose of this Agreement is for the Support Provider to provide assistance to Support Recipient in developing a collective impact model unique to the needs and goals in the Peralta Community College District / Oakland, CA regional area that is similar to the collective impact model developed by Support Provider for the Nashville, Tennessee area. In conjunction with this purpose, Support Provider shall provide Support Recipient access, free of charge, to Support Provider's tools and materials, including without limitation its toolset (principles, structure, process, technology), proprietary website, training manuals, dashboards, documentation, and other tools ("Tools and Materials") needed to assist Support Recipient in achieving its goals as stated herein. Support Recipient's access to the website, shall be governed by and in accordance with the terms and conditions posted by Support Provider to the website.

1.2 The parties hereto agree that they shall, at all times, act in good faith and use their best efforts to fulfill all of their respective obligations under this Agreement.

1.3 Support Provider shall provide Support Recipient the following training and support services:  
November 15, 2016 – June 30, 2017

- Up to 12 days on-site staff support on principles, structure, process (1 day per consultant on site)
- Up to 60 hours (2 hours/week) remote staff support on principles, structure, process by phone/email
- Up to 5 days on site to establish the instance and train the site administrator to use the portal software.
- Up to 75 hours (2.5 hours/week) of technology support by phone/email
- 2 registrations to annual AUSA Network Conference
- Primary site hosting costs
- Use of Alignment portal software, including all enhancements and updates
- Membership in Alignment USA network

Any of the above described staff support time available to Support Recipient that is not used shall be forfeited.

1.4 As a material inducement to Support Recipient to enter into this Agreement and to pay the consideration referred to herein, the Support Provider represents and warrants that: (1) no virus, turn-off device, encryption code, or lock-out device is included in or with any tools and materials as outlined in Section 1.1 unless Support Recipient shall have specially, in writing, requested inclusion of a turn-off device, encryption code, or lock-out device (in which event such code or device shall be included, but only in accordance with such specifications as Support Recipient may expressly provide); and, (2) no programs, software, or materials Support Provider provides to Support Recipient contain any defamatory, obscene, or pornographic material.

**SECTION II**  
*Term and Termination*

2.1 The initial term (“Initial Term”) of this Agreement shall commence on November 15, 2016 and end on June 30, 2017.

2.2 Prior to the expiration of the Initial Term either party may terminate this Agreement for cause if the other party breaches this Agreement. Prior to such termination, however, the party claiming a breach of this Agreement shall give written notice to the other party identifying the nature of the alleged breach and allowing the other party a minimum period of 15 business days after receipt of said notice to cure the alleged breach.

2.3 In the event of a termination of this Agreement in accordance with Section 2.3, Support Recipient shall pay all unpaid monthly fees and all invoices for the costs and expenses incurred in accordance with Sections 3.1 and 3.2, below.

2.4 In the event that this contract is terminated before expiration of the Initial Term, Section 4.4 below shall be void and have no effect.

**SECTION III**  
*Payments to Support Provider*

3.1 In exchange for the services provided above, Support Recipient agrees to pay Support Provider fees according to the following fee schedule.

\$40,000 plus estimated travel cost up to \$20,000

Services shall commence on November 15, 2016 and end on June 30, 2017. Support Recipient shall pay the above fees to Support Provider within thirty (30) days of quarterly invoice.

3.2 Support Recipient shall reimburse Support Provider for all related travel expenses (as estimated in section 3.1) for Support Provider’s personnel, publication costs, printing and other miscellaneous expenses within thirty (30) days of Support Recipient’s receipt of Support Provider’s invoice for said expenses.

3.3 Additional work beyond the scope of this Agreement may be negotiated as needed and set forth in a writing signed by authorized representatives of both parties.

**SECTION IV**  
*Intellectual Property; No Assignment of Rights; Confidentiality*

4.1 Support Recipient hereby acknowledges that Support Provider's Tools and Materials are the exclusive intellectual property of the Support Provider. Support Recipient agrees that this Agreement does not constitute an assignment of rights in said intellectual property, that it has no rights of ownership therein, and that it has no right to license, distribute, share, sell or loan any of this intellectual property with third parties. This provision is central to Support Provider's entry into this Agreement.

4.2 Support Provider retains the right to the exclusive control of this intellectual property, including the right to enter into agreements with similar organizations to develop or market such intellectual property. Nothing herein shall be construed to be a restriction or limitation of such rights.

4.3 Support Provider hereby grants Support Recipient a non-exclusive, revocable, limited license to use the Tools and Materials during the term of this Agreement for Support Recipient's internal business purposes of this Agreement set forth in Section 1.1.

4.4 Upon the expiration of the Initial Term or any Renewal Term of this Agreement, and provided that Support Recipient has fully paid all fees, travel expenses, publication costs, printing and other miscellaneous expenses due and owing as provided herein, Support Recipient's license to use the Tools and Materials shall become perpetual with yearly hosting fee; the Support Provider will (1) maintain the website in the form in which it currently appears or may appear in the future, and (2) provide Support Recipient updated, revised, or modified Tools and Materials after the expiration of this Agreement.

4.5 SUPPORT PROVIDER PROVIDES THE TOOLS AND MATERIALS "AS IS" AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE TOOLS AND MATERIALS. SUPPORT PROVIDER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. In the event of legal action brought by (or reasonably foreseen by Support Provider or Support Recipient to be brought by) a third party disputing Support Provider's right, title, and interest in the Tools and Materials or alleging the infringement by the Tools and Materials of a third party's patent, copyright, or trademark, Support Provider at its discretion shall either (a) immediately modify and provide Support Recipient a non-infringing copy of the Tools and Materials, or (b) promptly obtain, at Support Provider's sole expense, a license having substantially the same terms and conditions as this Agreement to allow Support Recipient to use the Tools and Materials as contemplated by this Agreement. If Support Provider determines in its reasonable discretion that cannot modify the Tools and Materials or obtain such a license, Support Provider shall refund Client all fees paid under this Agreement.

4.6 Support Provider's business model, the Tools and Materials (including without limitation secured portions and content of the website), this Agreement, and other information and documents that Support Provider marks as confidential or orally notifies Support Recipient as being confidential (collectively, "Confidential Information"), are the confidential and proprietary information of Support Provider. Support Recipient agrees that it shall keep Confidential Information confidential and not disclose to any third party or use for the benefit of any third party. The restrictions set forth in this Section 4.5 shall not apply to any information after the date and to the extent which such information (a) is or becomes known to the general public through no act or failure to act of Assignor; (b) with respect to information disclosed by Assignee to Assignor, is demonstrated to have been known by Assignor at the time of the receipt thereof from Assignee, as

evidenced by tangible records existing prior to such receipt; or (c) subsequently is rightfully obtained from a third party who lawfully possesses the information and who has the right to make such disclosure. Should this Agreement be terminated prior to the expiration of the Initial Term, Support Recipient shall return to Support Provider all copies of the Confidential Information, cease any use therefore, and shall keep the Confidential Information confidential for a period of three (3) years following the termination of the Agreement.

## **SECTION V** *General Provisions*

**5.1 Modification or Termination upon Advice of Counsel.** The parties acknowledge that as not for profit organizations, they share the common goal of improving educational outcome for students in their respective communities. Hence, the consideration recited herein is intended for Support Provider to recapture some of its development costs and the out of pocket costs associated with providing consultation to assist Support Recipient in achieving similar outcomes. If at any time either party reasonably believes in good faith based upon the written advice of reputable tax counsel, or by a valid ruling by a court or governmental agency, that this Agreement or the performance of this Agreement violates any material law or regulation, State or federal, presents a substantial risk of the loss or restriction of that party's not for profit tax exemption, or right to participate in any governmental program, then that party may, upon written notice, require the other party to enter into good faith negotiations to renegotiate the terms of this Agreement, in a manner that attempts to retain as much as possible of the arrangements originally contemplated by the parties without violating any applicable legal or tax requirements. If the parties are unable to reach agreement concerning the modification of this Agreement within 90 days after the date of the notice seeking renegotiation (or sooner if required by law), then either party may immediately terminate this Agreement by providing written notice to the other party. The rights of the parties under this Section 6.1 are in addition to any other termination rights the parties may have under this Agreement.

**5.2 Entire Agreement.** This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements and negotiations which may have heretofore been entered into or conducted relating to the subject matter hereof and shall not be modified or amended except in writing signed by both parties.

**5.3 No Waiver.** The parties hereto may, only by an instrument in writing, extend the time for or waive the performance of any of the obligations of the parties hereto. Failure of either party to enforce any rights that they may have against the other for the other's breach hereof shall not constitute a waiver of the said right, nor shall any written waiver given by a party pursuant hereto be deemed to constitute a waiver of any other right not expressly waived therein.

**5.4 Severability.** Each provision hereof is intended to be severable, and the invalidity or unenforceability of any portion of this Agreement shall not affect the validity or enforceability of the remainder hereof.

**5.5 Governing Law and Venue.** This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Tennessee, and no presumption shall arise by virtue of identifying either party as the author of this Agreement. The parties agree that the exclusive jurisdiction to bring legal action to interpret or enforce the terms of this Agreement shall be within the courts of record in Davidson

County, Tennessee. The parties further agree that at the conclusion of any such action, the prevailing party shall be entitled to recover all of its costs of litigation, including but not limited to reasonable attorney fees, from the losing party.

5.6 **Relationship of Parties.** The relationship created by this Agreement is solely that of an arms-length transaction between independent parties. This Agreement shall not be deemed to have created a relationship of master/servant, employer/employee, principal/agent, a partnership or a joint venture. Support Provider shall use its own discretion in providing the products and services defined herein. Each of the parties agrees that it shall not hold itself out to third parties as having the authority to bind the other to any liability, obligation, or undertaking whatsoever. This Agreement is intended for the exclusive benefit of the Support Recipient and Support Provider. No third party shall be entitled to rely upon this Agreement as a third-party beneficiary or otherwise.

In witness whereof, the parties have executed this Agreement by the signatures of their authorized agents and on the dates as set forth below:

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by: Melissa Jagers, President and CEO  
for Support Provider: **Alignment Nashville**  
(a Tennessee nonprofit corporation)  
21 White Bridge Road, Suite 201  
Nashville, TN 37205

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by: Chancellor Jowell Laguerre, PhD  
for Support Recipient: **East Bay Career Pathways**  
  
Peralta Community College District Office  
333 E. 8<sup>th</sup> Street, Oakland, CA 94606

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Date

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Date