PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT is effective as of ("Effective Date"), and is between Ector County Independent School District (ECISD) and New Classroom Innovation Partners, Inc.
In consideration of the mutual promises of this Agreement, the Parties agree as follows:

ARTICLE 1 BACKGROUND

1.1 Ector County Independent School District has the statutory authority to contract with persons, firms, consultants and/or entities for the provision of services to the ECISD.

1.2 Ector County Independent School District has determined that a need exists to retain an independent contractor to provide the Services, as defined herein.

1.3 New Classroom Innovation Partners, Inc. is qualified to provide the Services, as defined herein.

ARTICLE 2 DEFINITIONS

2.1 "*Completion Schedule*" means a completion schedule and a range of mutually acceptable work hours established through a written agreement by the Parties for the Services, as defined herein, listed in Schedule A.

2.2 "*Confidential Information*" means information and materials in oral, written, graphic or electronic form that is non-public, confidential and/or proprietary relating to the Party, including without limitation, student records, records, notes, data, reports, data sources, reference materials, sketches, drawings, memoranda, disks, documentation, research, development, processes, procedures, marketing techniques and materials, marketing and development plans, purchasing information, price lists, cost and pricing policies, financial information, intellectual property, and all other information of a secret or confidential nature.

2.3 "*Contract Sum*" is the total amount payable by Ector County Independent School District to New Classroom Innovation Partners, Inc. for performance of the Services, as defined herein, listed in Schedule A.

2.4 "*De-identified Information*" means Confidential Information from which all Personally Identifiable Information or PII, as defined herein, and attributes about such data, have been permanently removed so that no individual identification can be made.

2.5 "*Employee Benefit*s" means any employer withholdings or liability for: (a) taxes, FICA, Medicare or Medicaid; (b) medical or disability insurance; (c) vacation or leave; (d) pension; or (e) unemployment insurance or worker's compensation insurance.

2.6 "*Materials*" means all deliverables, reports and written documents expressly prepared for, or submitted to Ector County Independent School District by New Classroom Innovation Partners, Inc. while performing the Services, as defined herein.

2.7 "*Personally Identifiable Information*" or "*PII*" means information and metadata that, alone or in combination, is linked or linkable to a specific student so as to allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. Personally Identifiable Information includes, but is not limited to: (a) the student's name; (b) the name of the student's parent or other family members; (c) the address or phone number of the student or student's family; (d) personal identifiers such as the student's state-assigned student identifier, social security number, student number or biometric record; (e) indirect identifiers such as the student's date of birth, place of birth or mother's maiden name; and (f) demographic attributes, such as race, socioeconomic information, and gender.

2.8 "*Services*" means the scope of Services New Classroom Innovation Partners, Inc. shall perform for Ector County Independent School District listed in Schedule A. New Classroom Innovation Partners, Inc. may not perform any Services prior to the execution of this Agreement.

2.9 "Travel Expenses" means the total amount of New Classroom Innovation Partners, Inc.'s actual expenses and costs for food, lodging and travel incurred in connection with New Classroom Innovation Partners, Inc.'s performance of the Services. No travel expenses are anticipated for this project. Any travel expenses must be approved in advance, in writing.

ARTICLE 3 PAYMENTS AND TRAVEL EXPENSES

3.1 Ector County Independent School District has no obligation to make any payments to New Classroom Innovation Partners, Inc. If New Classroom Innovation Partners, Inc. performs any Services prior to the execution of this Agreement.

3.2 Ector County Independent School District does not pre-pay or make deposit for New Classroom Innovation Partners, Inc. performance of the Services. Ector County Independent School District issues all payments after New Classroom Innovation Partners, Inc. completes the Services. Once New Classroom Innovation Partners, Inc. has completed the Services, New Classroom Innovation Partners, Inc. shall submit invoices to Ector County Independent School District for request of payment on the terms and conditions specified in Schedule A.

3.3 New Classroom Innovation Partners, Inc. shall promptly pay each subcontractor and supplier, upon receipt of payment from Ector County Independent School District, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

3.4 Ector County Independent School District shall not have responsibility for payments to a subcontractor or supplier.

3.5 Travel Expenses must be approved by Ector County Independent School District on the terms and conditions specified in Schedule B. If approved, New Classroom Innovation Partners, Inc. shall submit all itemized receipts and supporting documentation to receive payment for its Travel Expenses. No other types of expenditures are reimbursable.

ARTICLE 4 GENERAL SCOPE OF SERVICES

4.1 **Supervision.** New Classroom Innovation Partners, Inc. shall supervise and direct the Services using the New Classroom Innovation Partners, Inc.'s best skill and attention. New Classroom Innovation Partners, Inc. shall be solely responsible for and have control over the Services.

4.2 **Labor and Materials.** Unless otherwise provided in Schedule A, New Classroom Innovation Partners, Inc. shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Services.

4.3 **Correction of Services.** New Classroom Innovation Partners, Inc. shall promptly correct all deficiencies and/or defects in the Services and/or any work that fails to conform this Agreement. All corrections shall be made within seven (7) calendar days after reported by email from Ector County Independent School District to New Classroom Innovation Partners, Inc. New Classroom Innovation Partners, Inc. shall bear all costs of correcting such rejected Services. If New Classroom Innovation Partners, Inc. fails to correct the work within the period specified, Ector County Independent School District may correct it in accordance with Article 4 of this Agreement or take any action pursuant to Article 9 of this Agreement.

4.4 **Ector County Independent School District's Right to Change the Services.** Ector County Independent School District, without validating the Agreement, may order changes in the Services within the general scope of the Agreement, consisting of additions, deletions or other revisions, and the Contract Sum and Completion Schedule shall be adjusted accordingly, in writing. If Ector County Independent School District and New Classroom Innovation Partners, Inc. cannot agree to a change in the Contract Sum, Ector County Independent School District shall pay New Classroom Innovation Partners, Inc. its actual costs.

4.5 **Ector County Independent School District's Right to Stop the Services.** If New Classroom Innovation Partners, Inc. fails to correct the Services that is not in accordance with this Agreement, Ector County Independent School District may direct New Classroom Innovation Partners, Inc. in writing to stop the Services until the correction is made.

4.6 **Ector County Independent School District's Right to Carry Out the Services.** If New Classroom Innovation Partners, Inc. defaults or neglects to carry out the Services in accordance with this Agreement and fails within a seven (7) day period after receipt of written notice from Ector County Independent School District to commence and continue correction of such default or neglect with diligence and promptness, Ector County Independent School District may, without prejudice to other remedies, correct such deficiencies at the cost of the Contractor.

ARTICLE 5 EMPLOYEES

5.1 **Status.** All employees of New Classroom Innovation Partners, Inc. shall be considered to be, at all times, employees of the Contractor, under its sole discretion, and not an employee or agent of Ector County Independent School District.

1) Ector County Independent School District may require New Classroom Innovation Partners, Inc. to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable, and whose continued employment on Ector County Independent School District property is not in the best interest of ECISD (Schedule D).

2) New Classroom Innovation Partners, Inc. shall not employ, retain, hire, or use any individual that has been convicted of any felony charges as the same is defined under the laws of the State In the performance of the services to be rendered and materials to be provided to Ector County Independent School District pursuant to this Solicitation unless New Classroom Innovation Partners, Inc. receives prior written permission.

3) To protect the staff and program against undue invasion of the school or work day, sales representatives shall not be permitted in schools or other departments for the purpose of making sales unless authorized to do so by the ECISD or his/her designee. If special or technical details concerning goods or services to be purchased are required, the involvement of New Classroom Innovation Partners, Inc. should be coordinated through the procurement department.

ARTICLE 6 COMPLIANCE WITH LAW AND Ector County Independent School District POLICIES

6.1 **Compliance with Law/Ector County Independent School District Policies.** New Classroom Innovation Partners, Inc. will comply with all laws, regulations, municipal codes and ordinances and other workplace requirements and standards applicable to the provision of the Services including, without limitation, federal and state laws governing wages and overtime, civil rights/employment discrimination, equal employment, safety and health, verifiable security background checks, employees' citizenship, withholdings, pensions, reports, record keeping, and campaign contributions and political finance.

6.2 **Ector County Independent School District Standards.** All Services and Materials provided under this Agreement must follow the specifications, standards and procedures of ECISD, including, but not limited to: Construction Standards and Safety Standards.

6.3 **Immigration**. New Classroom Innovation Partners, Inc. shall not knowingly employ an undocumented person who shall perform the Services and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform the Services, through participation in the "E-Verify" Program administered by the Social Security Administration and Department of Homeland Security, or the State Department of Labor and Employment Program. New Classroom Innovation Partners, Inc. shall not knowingly enter into a contract with a subcontractor that fails to certify to New Classroom Innovation Partners, Inc. that the subcontractor does not knowingly employ or contract an undocumented person to perform the Services. If New Classroom Innovation Partners, Inc. has actual knowledge that a subcontractor is employing or using an undocumented person to perform the Services, New Classroom Innovation Partners, Inc. shall notify the

subcontractor within three (3) days and will terminate this Agreement if a subcontractor does not stop employing or using the undocumented person within three days of receiving the notice.

6.4 **Contractors Debarred, Suspended, or Proposed for Debarment.** New Classroom Innovation Partners, Inc., to the best of its knowledge and belief, represents that New Classroom Innovation Partners, Inc. and/or any of its principals, officers, directors, owners, partners, or a person having primary management or supervisory responsibilities within a business entity, are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any agency of the Federal, State or local government; (b) has not within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract or for violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; and (c) is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the aforementioned offenses enumerated in this paragraph; and (d) has not within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds $3,000 for which the liability remains unsatisfied; and (e) has not within a three-year period preceding this offer, had one or more contracts terminated for default by any agency of the Federal, State or local government.

6.5 **Open Records.** The Parties understand that this Agreement and the Materials may be subject to the State Open Records Act, and that in the event of a request to Ector County Independent School District for disclosure of such information, Ector County Independent School District will advise New Classroom Innovation Partners, Inc. of such request in order to give New Classroom Innovation Partners, Inc. the opportunity to object to the disclosure of any of its confidential and/or proprietary material. In the event of the filing of a lawsuit to compel such disclosure, Ector County Independent School District will tender all such material to the court for judicial determination of the issue of disclosure and New Classroom Innovation Partners, Inc. agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same.

6.6 **Background Checks.** New Classroom Innovation Partners, Inc. and every person, including any subcontractor or agent of the New Classroom Innovation Partners, Inc., who provides direct services to students, or who has access to student data, shall be required to have a criminal background check and other Ector County Independent School District requirements. Conducting a State Bureau of Investigation criminal history check or a Name Check investigation for any person providing services under this Agreement does not meet Ector County Independent School District requirements. The costs associated with the background checks are solely the New Classroom Innovation Partners, Inc.'s responsibility. Thereafter, any personnel, subcontractor, volunteer or agent hired or added during the term of this Agreement shall satisfy the requirements set forth in this Section before performing services on New Classroom Innovation Partners, Inc.'s behalf. New Classroom Innovation Partners, Inc. shall make the background check results available upon request of Ector County Independent School District. Ector County Independent School District also reserves the right to conduct its own criminal background check of every person before Services begin.

1) Notwithstanding the criminal background check requirement as set forth above, New Classroom Innovation Partners, Inc. hereby certifies that no employee, subcontractor, volunteer or agent of New Classroom Innovation Partners, Inc. performing the Services has been convicted in State or in any other State of a criminal offense involving: (i) the abuse, abduction, sexual molestation, physical or sexual assault on, or rape of a minor; or (ii) any crime involving exploitation of minors, including but not limited to, child pornography offenses or any crime of violence. New Classroom Innovation Partners, Inc. shall notify Ector County Independent School District immediately upon the discovery or receipt of any information that any person performing services on New Classroom Innovation Partners, Inc.'s behalf has been detained or arrested by a law enforcement agency of the aforementioned crimes. New Classroom Innovation Partners, Inc. understands that allowing any employee, subcontractor, volunteer or agent of New Classroom Innovation Partners, Inc. performing the Services who has been arrested or convicted of the aforementioned crimes to: (i) provide direct services to students,
(ii) access student data, or (iii) enter onto Ector County Independent School District property,

constitutes a material breach of this Agreement and may result in the immediate termination of this Agreement and referral to law enforcement for possible criminal charges, or additional civil sanctions pursuant to federal and state law. Misdemeanor conviction(s) may not necessarily result in the immediate termination of this Agreement. Misdemeanor convictions are evaluated on a case-by-case basis, considering the nature and gravity of the offense, time elapsed since the offense, conviction, or time served, and the nature of the Services. Upon Ector County Independent School District's request, New Classroom Innovation Partners, Inc. shall provide documentation of every person performing the Services to substantiate the basis for this certification.

6.7 **Conflict of Interest**. New Classroom Innovation Partners, Inc. cannot be related to any Ector County Independent School District employee if such a relationship would create a material financial interest or result in the violation of Ector County Independent School District Board Policy CHE by either New Classroom Innovation Partners, Inc. or Ector County Independent School District employee. New Classroom Innovation Partners, Inc. agrees to abide by the Code of Conduct and Conflict of Interest Certification as shown in Schedule C.

ARTICLE 7 INSURANCE AND LIABILITY

7.1 **Insurance.** New Classroom Innovation Partners, Inc. must submit proof of insurance to Ector County Independent School District at the time of execution of this Agreement.

7.2 **Indemnification.** New Classroom Innovation Partners, Inc. agrees to indemnify, defend and hold Ector County Independent School District harmless from and against any claim, cause of action, judgment, loss, demand, suit, or legal proceeding brought against Ector County Independent School District or its employees, officers, representatives, or agents, which arises directly or indirectly from any act or omission of New Classroom Innovation Partners, Inc., including but not limited to any misconduct or neglect by New Classroom Innovation Partners, Inc. and/or its employees, subcontractors, or agents. Furthermore, to the maximum extent permitted by law, New Classroom Innovation Partners, Inc. will defend Ector County Independent School District from any claim and will indemnify Ector County Independent School District against any liability for any Employee Benefits for New Classroom Innovation Partners, Inc. and/or any of its employees, subcontractors, or agents, imposed on Ector County Independent School District; and New Classroom Innovation Partners, Inc. will reimburse Ector County Independent School District for any award, judgment or fine against Ector County Independent School District based on the position New Classroom Innovation Partners, Inc. and/or any of its employees, subcontractors or agents, who provides the Services was ever Ector County Independent School District's employee, and all attorneys' fees and costs Ector County Independent School District reasonably incurs defending itself against any such liability. The obligations created under this Article will survive the expiration or termination of this Agreement.

ARTICLE 8 DEFAULT AND REMEDIES

8.1 **Right to Injunction.** New Classroom Innovation Partners, Inc. further agrees that, if New Classroom Innovation Partners, Inc. violates any representation, warranty or certification of this Agreement, it would be difficult to determine the damages Ector County Independent School District would suffer including, but not limited to, losses attributable to the disclosure, theft and/or misuse of Confidential Information. Accordingly, New Classroom Innovation Partners, Inc. agrees that if New Classroom Innovation Partners, Inc. violates any representation, warranty or certification of this Agreement, Ector County Independent School District will be entitled to an Order for injunctive relief and/or for specific performance, or their equivalent, from a court, including requirements that New Classroom Innovation Partners, Inc. take action or refrain from action to preserve the secrecy of Confidential Information. To protect Ector County Independent School District from additional damages, New Classroom Innovation Partners, Inc. agrees Ector County Independent School District does not need to post a bond to obtain an injunction and waives New Classroom Innovation Partners, Inc.'s right to require such a bond.

8.2 **Dispute Resolution.** Ector County Independent School District and New Classroom Innovation Partners, Inc. shall endeavor to resolve claims, disputes and other matters in question between them first by good faith discussions amongst the senior executives of each Party. The Parties shall mutually agree as to the process by

which these discussions shall occur. If the Parties are not able to resolve the dispute through good faith discussions then the Parties shall endeavor to resolve the dispute through mediation, upon mutual agreement of the Parties. A request for mediation shall be made in writing, delivered to the other Party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution. The Parties shall equally share the mediator's fee and any filing fees jointly. The mediation shall be held in Odessa, Texas. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

8.3 **Notices, Process.** Any notice this Agreement requires must be in writing and will be effective only if hand-delivered or sent by certified U.S. mail, return receipt requested, to the Party entitled to receive the notice at New Classroom Innovation Partners, Inc.'s address provided in this Agreement, while Ector County Independent School District's notice address is as follows [address]; or at such other address that either Party may provide later to the other Party. Each Party agrees to waive service of process in any action brought to enforce or to interpret this Agreement and the Parties further agree that service of the complaint and any other pleading, discovery, order or document in any such action that would otherwise have to be served by personal service will be deemed served three (3) days after being sent to the other Party and that Party's attorney as provided above.

8.4 **Force Majeure.** Neither New Classroom Innovation Partners, Inc. nor Ector County Independent School District shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this contract "force majeure" means acts of God; acts of the public enemy; acts of Ector County Independent School District and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes, freight embargoes; illegality, or unusually severe weather.

ARTICLE 9 TERM AND TERMINATION

9.1 **Term.** This Agreement, unless terminated earlier as provided herein, shall commence as of the Effective Date and shall terminate on 06-31-22. New Classroom Innovation Partners, Inc. agrees and acknowledges that Ector County Independent School District has no obligation to extend this Term, or contract for the provision of any future services, and makes no warranties or representations otherwise.

9.2 **Termination for Convenience**. Ector County Independent School District may, at any time, terminate this Agreement for Ector County Independent School District's convenience and without cause, upon sending a thirty (30) days written notification containing the reasons for the termination, the effective date, and in the case of partial termination, the portion to be terminated, to New Classroom Innovation Partners, Inc. New Classroom Innovation Partners, Inc. shall be entitled to receive payment for the Services performed by New Classroom Innovation Partners, Inc. prior to termination. New Classroom Innovation Partners, Inc. shall be entitled to no further compensation of any type from Ector County Independent School District.

9.3 **Termination for Cause.** Ector County Independent School District may terminate this Agreement immediately without prior notice if any of the following occurs:

1) If New Classroom Innovation Partners, Inc. fails to perform the Services in a manner satisfactory to Ector County Independent School District as per specifications, including delivery as specified;

2) If New Classroom Innovation Partners, Inc. commits an act of fraud, dishonesty, or any other act of negligent, reckless or willful misconduct in providing the Services to Ector County Independent School District;

3) If any contract by Ector County Independent School District with any third party on which this Agreement substantially depends is terminated or Ector County Independent School District is unable for any other reason to provide services to the party/parties to that contract;

4) If any circumstance beyond Ector County Independent School District's control, including, but not limited to, financial constraints imposed by action of the legislature or Governor of the State, prevents it from providing services or otherwise hinders, delays, or prevents Ector County Independent School District from receiving revenue or income or increases its overhead to an extent Ector County Independent School District reasonably decides to reduce or modify its operations; or

5) If New Classroom Innovation Partners, Inc. is otherwise guilty of a substantial breach of a provision of this Agreement.

6) When Ector County Independent School District terminates this Agreement for one of the reasons stated above, New Classroom Innovation Partners, Inc. shall not be entitled to receive further payment until the Services are completed. If the unpaid balance of the Contract Sum exceeds the cost of completing the Services, and other damages incurred by Ector County Independent School District and not expressly waived, such excess shall by paid to New Classroom Innovation Partners, Inc. If such costs and damages exceed the unpaid balance, New Classroom Innovation Partners, Inc. shall pay the difference to Ector County Independent School District. This obligation for payment shall survive termination of this Agreement.

9.4 **No Claim Against Ector County Independent School District**. Upon termination of this Agreement by Ector County Independent School District pursuant to this Article 9, New Classroom Innovation Partners, Inc. will not have any claim against Ector County Independent School District by reason of, or arising out of, incidental or relating to termination, except for compensation for the Services satisfactorily performed. In the event that this Agreement is terminated prior to the expiration date, New Classroom Innovation Partners, Inc. will submit any and all outstanding reports and information requested by Ector County Independent School District within ninety (90) days from the date of early termination.

9.5 **Termination/Unauthorized Approval**. If this Agreement is made contrary to Ector County Independent School District's Board of Education Policies, this Agreement shall be void and wholly without effect and shall not be binding upon Ector County Independent School District in any manner.

ARTICLE 10 CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

10.1 **Confidential Information Belongs Solely to The Disclosing Party.** All Confidential Information is the exclusive property of the Party disclosing such Confidential Information (the "Disclosing Party"). The Party receiving such Confidential Information (the "Receiving Party") therefore agrees that:

1) At all times while this Agreement is in effect, Receiving Party will keep secret and will not disclose to any third party, take or misuse any Confidential Information, or any other confidential and/or proprietary information Receiving Party acquires or has access to.

2) At all times while this Agreement is in effect, Receiving Party will not use or seek to use any Confidential Information for Receiving Party's own benefit or for the benefit of any other person or business or in any way adverse to the Disclosing Party's interests.

3) If New Classroom Innovation Partners, Inc. has received any Confidential Information during the Term of this Agreement, New Classroom Innovation Partners, Inc. may use De-identified Information for purposes of research, the improvement of New Classroom Innovation Partners, Inc.'s products and services, and/or the development of new products and services provided that New Classroom Innovation Partners, Inc. removes all Personally Identifiable Information.

4) In the event New Classroom Innovation Partners, Inc. uses or discloses any De-identified Information, New Classroom Innovation Partners, Inc. hereby agrees, represents, and warrants to Ector County Independent School District that New Classroom Innovation Partners, Inc. has made a reasonable determination that all Personally Identifiable Information has been permanently removed so that no personal identification can be made. In no event shall New Classroom

Innovation Partners, Inc. or any of the New Classroom Innovation Partners, Inc.'s employees, agents, New Classroom Innovation Partners, Inc., or representatives re-identify or attempt to re-identify any De-identified Information. New Classroom Innovation Partners, Inc. will indemnify, defend and hold harmless Ector County Independent School District and Ector County Independent School District's affiliates, officers, directors, and employees from and against any third party claims, demands, causes of action, judgments, damages, liabilities, costs and expenses (including reasonable attorney's fees) arising from or relating to New Classroom Innovation Partners, Inc.'s or any of the New Classroom Innovation Partners, Inc.'s employees, agents, contractors, or representatives unauthorized use, misuse, or illegal use of De-identified Information.

5) On Ector County Independent School District's request, New Classroom Innovation Partners, Inc. will execute a separate Data Protection Addendum if Ector County Independent School District believes it is necessary given the Services Contractor provides under this Agreement.

6) After termination of this Agreement, Receiving Party will preserve the secrecy of and will not disclose directly or indirectly to any other person or business any Confidential Information.

7) Receiving Party will promptly advise Ector County Independent School District of any unauthorized disclosure or use of Confidential Information by any person or entity.

10.2 **Copyright and Other Intellectual Property Rights.** To the extent the Materials may be subject to patent, copyright, trade secret, or proprietary rights of any kind:

1) New Classroom Innovation Partners, Inc. warrants and represents that the Materials are original and have not been published; that the Materials do not infringe upon any statutory copyright, common law right, proprietary right, or any other right whatsoever. New Classroom Innovation Partners, Inc. agrees to indemnify and hold Ector County Independent School District harmless against any claim of infringement of the Materials or of any patent, copyright, trade secret or other proprietary rights of third parties.

2) New Classroom Innovation Partners, Inc. agrees to secure permission in writing from any third parties whose works are utilized in whole or in part by New Classroom Innovation Partners, Inc. in the preparation of the Materials. New Classroom Innovation Partners, Inc. will notify Ector County Independent School District as to what degree the third party's works were used, as well as any limitations placed on the use of those third party's works.

3) New Classroom Innovation Partners, Inc. agrees and acknowledges that Ector County Independent School District is the exclusive owner of the Materials, and any related patent, copyright, trade secret, trademark, service mark, or any other proprietary rights in the Materials, are owned exclusively by Ector County Independent School District. To the extent the Materials are copyrightable, they shall be deemed to be works made for hire. To the extent that any Materials may not, by operation of law, be works made for hire, New Classroom Innovation Partners, Inc. hereby assigns to Ector County Independent School District the ownership of copyright in the Materials and Ector County Independent School District shall have the right to obtain and hold in its own name copyrights, registrations and similar protection which may be available in the deliverable Materials. New Classroom Innovation Partners, Inc. agrees to give Ector County Independent School District or its designees all assistance reasonably required to perfect such rights.

4) To the extent that any pre-existing materials are contained in the Materials, New Classroom Innovation Partners, Inc. grants to Ector County Independent School District an irrevocable, non-exclusive, worldwide, royalty-free license to (i) use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing materials and derivative works thereof, and, (ii) authorize others to do any, some or all of the foregoing.

5) No license or right is granted by Ector County Independent School District to New Classroom Innovation Partners, Inc., either expressly or by implication, estoppel or otherwise, to publish, reproduce, prepare derivative works based upon, distribute copies of, publicly display, or perform the Materials, either during or after the termination of this Agreement, without a written agreement signed by an authorized representative of Ector County Independent School District.

ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1 **Non-Solicitation.** Neither Party shall not solicit directly nor indirectly any of Ector County Independent School District's employees or New Classroom Innovation Partners, Inc.'s for a period of two years following the termination of this Agreement without prior written consent of the other Party, but only to the extent permitted by law and only for those employees introduced to the other Party under the terms of this Agreement. Notwithstanding the foregoing, advertisements in newspapers and trade publications, electronic job boards or unsolicited actions initiated by an employee in an attempt to seek employment shall not constitute solicitation as used herein.

11.2 **No Unauthorized Use of Names, Logos and/or Trademarks**. Neither Party will use the other's name, logo, and/or trademark in any advertisement, promotion, business card, etc. without the other Party's prior written consent in each instance.

11.3 **Entire Agreement.** This Agreement and all exhibits hereto constitute the entire agreement between the Parties with respect to the Services and all prior proposals are hereby terminated.

11.4 **Choice of Law.** Any claim, controversy or dispute arising under or related to this Agreement shall be construed pursuant to the substantive, not conflicts, laws of the State of [state]. Each of the Parties submits to the exclusive jurisdiction of any state sitting in or federal court with jurisdiction over [county, state], in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each Party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other Party with respect to any such action or proceeding.

11.5 **Governmental Immunity.** No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions.

11.6 **Partial Invalidity.** The invalidity of any provision of this Agreement shall not impair or affect the validity of the remaining portions hereof, and this Agreement shall be construed as if such invalid provision had not been included herein.

11.7 **Assignment Prohibited.** New Classroom Innovation Partners, Inc. cannot assign the Services under this Agreement.

11.8 **Counterparts.** This Agreement may be executed simultaneously in two (2) counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same agreement.

11.9 **Electronic Signatures and Electronic Records.** New Classroom Innovation Partners, Inc. consents to the use of electronic signatures by Ector County Independent School District. This Agreement, and any other documents requiring a signature under this Agreement, may be signed electronically by Ector County Independent School District in the manner specified by Ector County Independent School District. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date above first written.

ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT

By: _____

_____
NAME

_____
TITLE

By: _____

_____
NAME

_____
TITLE

NEW CLASSROOM INNOVATION PARTNERS, INC.

By: _____

_____
NAME

_____
TITLE

By: _____

_____
NAME

_____
TITLE

APPROVED AS TO FORM AND LEGALITY:

By: _____

_____
NAME

_____
TITLE

SCHEDULE A - Scope of Services and Contract Sum

STATEMENT OF WORK

- To provide guidance & support to the district in developing our 6th-8th grade teachers in their knowledge of math skills and providing a program that will support personalized math learning for all students (English Language Learners and Special Education).
- Support must be customizable to meet the needs of our unique district and campuses. Sessions can occur within a variety of settings (remote) but must include on-site support.
- Campus readiness assessments must be included to guide the district in selecting campuses to launch personalized learning system-wide.
- An adaptive, personalized curriculum that includes multiple ways for students to learn including teacher-led instruction, virtual/independent instruction and collaborative instruction.
- On-going progress monitoring of the students.
- The ideal partnership will align their work with state standards for Texas.

PROGRAM DESCRIPTION

RFP #21-27 for Leadership and professional development for district and campus leaders, teachers and students for Personalized Learning in Math.

The Ector County Independent School District (ECISD) is seeking to build the competencies needed for system-wide implementation of Personalized Learning. This work will include developing competency profiles needed for leaders, teachers, and students, which will be the foundation/explore work of personalized learning, then move toward launching and taking personalized learning to scale for transformation.

DELIVERABLES

Northwest Evaluation Association (NWEA), is a research-based not-for-profit organization that creates academic assessments for student's Pre-K through12. Currently, NWEA assessments are used by over 9,500 schools and districts in 145 countries. Its primary assessment product is the MAP Suite, a collection of formative and interim assessments that help teachers identify unique student learning needs, track skills mastery, and measure academic growth over time. By testing students three times over the school year, MAP assessments attempt to track student growth over time in order to help educators plan instruction that meets student at their level and predict performance on accountability measures.

Data from NWEA regarding suggested milestones for Math Innovation Zones (MIZ) and for high impact tutoring for Outcomes Based Contracts.

Research within the data team with NWEA shows that when a student reaches 60% to 65% Conditional Growth Percentile, this is an attainable milestone and approximately 40% of the students nationwide reach this milestone.

NWEA said when a student reaches the 85th Conditional Growth Percentile, and 15% of the students nationwide reach this milestone.

60 to 65 Conditional Growth Percentile 5% bonus

66 to 99 Conditional Growth Percentile 10% bonus

If a student does not meet fidelity of implementation or if students reach 50th percentile conditional growth the partner received base pay

If a student does not meet conditional growth but met implementation requirement <40 to 49% then we deduct 5%

If a student does not meet conditional growth but met implementation requirement <39 we deduct 10%

TIMELINE

Key Activities	Estimated Delivery Date

Site Kick-Off Meeting	
First Session Date	
Last Session Date	
Post-Program Evaluation Meeting	

Ector County Independent School District will ensure required parent participation as per House HB4545:

- Parents will need to sign-off on a consent and participation form that details their responsibility and commitment to ensuring student attendance.
- A communication protocol will be put in place to notify parents of absenteeism with a requirement that they respond, identifying the reason for absenteeism.
- Parents will be notified that unexcused absenteeism may result in their child's removal from the program.
- Non-responsive parents with students absent three times can lead to removal of New Classroom Innovation Partners, Inc. requirements for servicing that student.

OUTCOMES-BASED CONTRACTING TERMS

Confirmed Participants. For the contracted PERIOD OF PERFORMANCE specified in Schedule A, Ector County Independent School District will assign students to program. No later than the date listed in DELIVERABLES, New Classroom Innovation Partners, Inc. will notify Ector County Independent School District of the maximum allowable student participant count by grade. Students will be considered Confirmed Participants if they are (a) within the allowable maximum student count, (b) included on a list given by Ector County Independent School District to New Classroom Innovation Partners, Inc., and (c) attend at least three (3) consecutive sessions with a New Classroom Innovation Partners, Inc.

Students may only be removed from the list of Confirmed Participants (or replaced by other students—e.g., if a student is chronically disrupting a tutor group or has exceeded the agreed-to maximum absences) by mutual agreement.

Incentives. New Classroom Innovation Partners, Inc. will be paid a prorated portion of the group tutoring Base Amount for each student at the beginning of each month subject to the conditions in the Infrastructure and Attendance and Minimum Service Level paragraphs below, for each Confirmed Participant.

In addition to the Base Amount, New Classroom Innovation Partners, Inc. will be paid a Contingent Amount for each student for each Milestone (specified below) achieved by that student, according to the below Rate Card.

Infrastructure and Attendance. Milestones may fail to be hit for reasons other than the effectiveness of tutoring provided:

1. Ector County Independent School District is responsible for providing the conditions to enable tutoring to take place as specified in RESPONSIBILITIES AND REQUIREMENTS. If Ector County Independent School District does not meet these responsibilities, Base Amounts are to be paid to New Classroom Innovation Partners, Inc. for each affected Confirmed Participant regardless of participation for the duration of the program.
2. For tutoring sessions to be delivered during school hours or immediately after school (‘In School’ models), the responsibility to ensure student attendance lies with Ector County Independent School District and so Base

Amounts are to be paid for every month regardless of attendance.

3. For tutoring sessions to be delivered out of school hours--e.g., at-home, evenings, weekends, or holidays ('Out of School' models) --the responsibility to ensure student attendance lies with Ector County Independent School District, New Classroom Innovation Partners, Inc., and the student's parent(s) as defined in RESPONSIBILITIES AND REQUIREMENTS. Base Amounts to be paid as follows:
    - Base Amounts are to be paid for every month regardless of attendance.
    - Students absent more than three sessions may be replaced with another student upon mutual agreement.

Minimum Service Level. No Base Amount or Contingent Amount shall be paid if the Minimum Service Level specified herein is not met by New Classroom Innovation Partners, Inc.

Data. Ector County Independent School District and New Classroom Innovation Partners, Inc. acknowledge that effectiveness relies on sharing of data to make timely decisions. Ector County Independent School District shall provide:

- Student-level bandwidth assessment report for all students participating from a non-Ector County Independent School District network.
- Data as defined in RESPONSIBILITIES AND REQUIREMENTS.

New Classroom Innovation Partners, Inc. shall provide:

- Minimum monthly report to Ector County Independent School District on tutor sessions completed and student attendance.
- Pre-diagnostic assessment results.
- Post-program diagnostic assessment results and pre-to-post diagnostic gain analysis within 30-days of program completion.

Review. New Classroom Innovation Partners, Inc. and Ector County Independent School District shall meet to review program progress at least monthly.

Extension of Contract Period. The Contract Period can be extended by mutual agreement. **Student Participant Population:** 9th and 11th grade students selected by Ector County Independent School District

Math Domain: [define]

Tutoring Model: N/A

Target Confirmed Participants: 2,369 students.

We have 2,369 students in 6-8 math in Bowie and Wilson & Young. Each campus fee is $130,000

- Bowie Middle School 1,137 students. Per pupil cost is $114.33 Base cost. 5% = 5.71 10% = 11.43
- Wilson & Young Middle School 1,232 students. Per pupil cost is $105.52 Base cost. 5 % = 5.27; 10% = 10.55

Student Demographics: [any limits or targets here; may limit the number or % of students served who are ELL or who have disabilities, for example.]

Milestones: [xx] Milestones for each student

Students pass the 60th conditional growth

Milestone 1: Value: 60th to 65th conditional growth percentile

- Goal: Improvement in student engagement in math
- Measurement: student survey
- Students fill out once per week throughout the program.

Criteria: [establish criteria for paying contingent amount]

Milestone 2: Value: 66th to 99th conditional growth percentile

Goal: % of students in 8th grade reach the meets level on STAAR Math

Measurement: End of Year MAP Conditional Growth Percentile

Criteria: [establish criteria for paying contingent amount. For example, if New Classroom Innovation Partners, Inc. earns the contingent fee for each student who improves at least 10% absolute in test score from pre to post.50% of the contingent fee will be paid for each student whose growth is between 5% and 10% is achieved.]

Here is an example for Bowie:

1,137 6-8 math students. Per pupil cost is $114.33

200 students did not meet fidelity of implementation	200 x 114.33 =	$ 22,866
150 students met the implementation criteria but < 39 percentile conditional growth -10%.	150 x 102.90 =	$ 15,435
183 students met the implementation criteria but <40 to 50th percentile -5%	183 x 108.62 =	$ 19,877
200 students met the implementation criteria and hit 50th percentile – base pay	200 x 114.33 =	$ 22,866
294 students reach 60 to 65 conditional growth percentile +5%	294 x 120.04 =	$ 35,292
80 students reach 66 to 84 conditional growth percentile +10%	80 x 125.76 =	$ 10,061
30 students reach >85% conditional growth percentile +15%	30 x 130.15 =	$ 3,904
	Total	$130,301

Rates:

Rate Card for Group Math Tutoring Sessions	
Outcome	Price
Base Payment per session	$
Milestone 1: 60 to 65th conditional growth percentile	5% Bonus
Milestone 2: 66 to 99th conditional growth percentail	10% Bonus

Base Amounts:

The base payment for group tutoring sessions will be paid in three installments, invoiced on the program launch date of [insert]. The initial invoice will be calculated off of estimated sessions to be delivered, based on estimated confirmed students, as schools will be actively enrolling students throughout the first four weeks. The second invoice will reconcile to actual delivered sessions. New Classroom Innovation Partners, Inc. will ensure that sessions include as many students as possible, up to four, so as to optimize the number of sessions delivered for each school.

Contingency Fees: At the close of the program, New Classroom Innovation Partners, Inc. will be paid additional fees per the rate card above for each of the Confirmed Participant Students for each milestone met.

Budget: Total of Base Amount plus all Contingent Milestones payments for Target Confirmed Participant Students must be no greater than **[insert].**

Minimum Service Level: Every Confirmed Participant will have a New Classroom Innovation Partners, Inc. tutor present online at their scheduled session time three times per week for eleven consecutive weeks. New Classroom Innovation Partners, Inc. will provide virtual meeting and whiteboard technology to deliver online live tutoring sessions attended by up to four students per session. New Classroom Innovation Partners, Inc. will monitor and report to Ector County Independent School District session up-time and any technical issues resulting from New Classroom Innovation Partners, Inc. provided virtual meeting and whiteboard technology not caused by student bandwidth issues.

In the cases that (a) a New Classroom Innovation Partners, Inc. tutor is not present for a scheduled session, causing a session cancellation, or (b) New Classroom Innovation Partners, Inc. provided technology issues cause greater than 50% disruption in tutor-reported learning for that session, New Classroom Innovation Partners, Inc. will report to Ector County Independent School District that the session did not meet the Minimum Service Level, reducing the next month's invoice by that session's cost as defined in the Rate Card.

ASSUMPTIONS

New Classroom Innovation Partners, Inc. and Ector County Independent School District understand that student attendance may vary and that it is the responsibility of both parties to promote high attendance across participating students. Students not maintaining consistent attendance may be removed from the program's Milestone measurements.

New Classroom Innovation Partners, Inc. program is provided at a set cost factored off of four students per session, three sessions per group per week, 11-weeks of sessions, regardless of actual attendance.

CHANGE CONTROL PROCEDURE

Requested program changes that deviate from this SOW and the associated invoice for program services will be made as a formal amendment to the contract in writing

CONTRACT PERIOD

Contract, if awarded, shall be for three (3) academic school years (starting in 2021-2022) with the option to "opt-out" of year two and/or three based on either the mutual consent of all parties and/or the availability of district funds (which may include the availability of federal or state grant funding if awarded.)

SCHEDULE B - Travel Expenses

No travel expenses are anticipated for this project. Any travel expenses must be approved in advance in writing.

Ector County Independent School District uses the prescribed by Federal guidelines for follow the Federal Travel Regulations U.S. General Services Administration Travel Resources | GSA. Additional rules set forth by State Statue Texas Regulations Act Texas Government Code Section 660 Travel Expenses.

ADD SCHEDULE C

ADD SCHEDULE D

INSERT PAYMENT BOND

INSERT PERFORMANCE BOND