

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services ("Agreement") is made effective as of 12/04/19 ("Effective Date"), by and between the William S. Hart Union High School District ("District"), a public school district organized and existing pursuant to State of California ("State") law, and Gradeslam, Inc. ("Service Provider"). The District and the Service Provider may be referred to herein individually as "Party" and collectively as the "Parties."

RECITALS

A. The District desires to obtain the Service Provider's professional services regarding A chat-based online tutoring service provided by Gradeslam, Inc.

B. The Service Provider represents and warrants that it has all licenses, certifications, approvals, resources, qualifications, skills, experience and other things as are necessary to fully and satisfactorily provide the below-listed services to the District as required by this Agreement.

C. The Parties have entered into this Agreement for purposes of setting forth the terms and conditions for the Service Provider to perform the below-listed services for the District.

Now, in consideration of the foregoing and of the respective rights and obligations of the Parties set forth herein, the Parties agree as follows:

AGREEMENT

PART 1: SCOPE, TIMING, AND COMPENSATION FOR SERVICE PROVIDER SERVICES

Section 1.1 Scope of Services. The scope of the services to be performed by the Service Provider pursuant to this Agreement ("Scope of Services") is set forth in Exhibit "A" attached to this Agreement. In completing the Scope of Services, the Service Provider shall at all times, work toward assisting the District to achieve its goals as may be determined by the Parties.

Section 1.2 Time for Services. This Agreement shall commence on the Effective Date of each temporary event and expire upon satisfactory completion of each temporary event services.

Section 1.3 Compensation. The District shall pay to the Service Provider, in exchange for satisfactory performance by the Service Provider of the Scope of Services required pursuant this Agreement, such all-inclusive compensation as is specified in Exhibit "B" attached to this Agreement. As applicable: (i) the Service Provider shall be entitled to payment as described in Exhibit "B" hereto; and/or (ii) the compensation to the Service Provider shall be based on the "Hourly Rate Schedule" set forth in Exhibit "B" hereto. Such compensation shall be payable by lump-sum invoicing submitted to the District

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by the Service Provider. The District shall pay undisputed invoices within thirty (30) days of receipt from the Service Provider. The District may, within fifteen (15) days of receipt of a payment request from Service Provider, reasonably request additional information and supporting documentation, in which case the District's time to pay the pending invoice shall be extended by an amount of time equal to the time in which it takes the Service Provider to submit such information and/or documentation.

PART 2: SERVICE PROVIDER STATUS AND ADMINISTRATION OF AGREEMENT

Section 2.1 Independent Service Provider. The Service Provider is, for any and all purposes of or related to this Agreement, an independent Service Provider to the District. In no circumstances shall the Service Provider, or any officer, employee or agent of the Service Provider, be deemed or construed to be an officer, employee or agent of the District on account of this Agreement. The Service Provider shall at all times conduct its activities in a manner consistent with its status as an independent Service Provider to the District, and, except as provided in this Agreement, the Service Provider shall have the right to determine the methods, means and mechanisms by which it shall perform the Scope of Services. The Service Provider shall not suffer or permit any third party (whether person or entity) to continue in any apparent belief that the Service Provider or any of the Service Provider's officers, employees or agents, is an officer, employee, or agent of the District. The Service Provider shall be responsible for ensuring compliance with all laws related to its employees including, without limitation, laws relating to workers' compensation and, if applicable, payment of prevailing wages. The compensation payable to Service Provider hereunder shall not be increased as a result of any costs incurred by Service Provider that are attributable to such compliance.

Section 2.2 Authorized Representatives. The Service Provider shall designate in writing to the District one person from its staff ("Service Provider Representative"), who (except as provided in Section 6.3 herein, if a different person is designated for purposes of Part 6 herein) shall be: (i) the District's sole contact person for the entity he or she represents; and (ii) responsible for and conduct any and all communications and other interactions between the entity he or she represents and the District. The Service Provider shall delegate to the Service Provider Representative all authority required to make any and all decisions on behalf of the Service Provider relating to the administration of this Agreement and the performance of the Scope of Services. The Service Provider Representative shall provide to the District their respective names, titles, telephone numbers and other contact information. At all times prior to full completion of this Agreement and the Scope of Services, the Service Provider Representative shall be reasonably available to District representatives, by telephone, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, and at such other times as they and the District may agree.

Section 2.3 District Rules, Policies, and Other Requirements. The District requires that the Service Provider complies with the requirements of Education Code Section 45125.1, regardless of whether such requirements are otherwise applicable. In such event, the Service Provider, at its sole cost and expense, and without additional compensation from the District, shall comply with all California Department of Justice guidelines and requirements with respect to fingerprinting of the Service Provider's officers, employees, agents, or other representatives who will or might be present on or at any District facility. Moreover, the Service Provider, and Service Provider's employees, agents, and representatives shall comply with all District rules, policies, or other requirements applicable to presence on District property including, but not limited to, policies regarding discrimination and the use of drugs, alcohol, and tobacco.

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Section 2.4 Prohibited Interests. Service Provider agrees to sign the Noncollusion Declaration attached hereto as Exhibit "C."

Section 2.5 Service Provider Capability. The Service Provider represents and warrants that: (i) it has any and all licenses as are required by law to permit the Service Provider to enter into this Agreement and perform the Scope of Services and shall submit a copy of said licenses to the District; (ii) any and all persons who will provide or perform the Scope of Services, including, without limitation, the Service Provider's employees, shall have the technical expertise and experience required to perform the Scope of Services in an efficient and timely manner; and (iii) the Service Provider has sufficient financial, personnel and other resources to adequately and timely perform the Scope of Services as required pursuant to this Agreement. Upon request of the District, the Service Provider shall remove from the site of the event, and prevent from performing any of the Scope of Services, any person whom the District has determined is not performing the Scope of Services in a reasonable manner or is a threat to the safety of any person(s) or property, and the Service Provider shall not thereafter use such person for or in connection with performance of any of the Scope of Services.

Section 2.6 Required Standard of Care. The Service Provider shall perform or cause to be performed all Scope of Services using such levels of care as are not less than the reasonable levels of care employed by other Service Providers providing similar services to school districts within the State in similar circumstances, and considering the District's goals and any facilities, financial, or other constraints or parameters described to the Service Provider either before or after the Effective Date.

Section 2.7 Compliance with Law. The Service Provider shall perform the Scope of Services in compliance with all applicable federal, State and local laws, regulations, ordinances and other governmental requirements, as they exist at the time of the Effective Date or as amended.

Section 2.8 Reliance on District Information. The Service Provider shall be entitled to rely on the accuracy and completeness of any and all information provided to the Service Provider by the District, subject to any qualifications or limitations on such information as the District may describe, and provided that the Service Provider may so rely only if it would be reasonable to do so.

PART 3: SERVICE PROVIDER INSURANCE

Section 3.1 Required Insurance. Prior to commencing any of the Scope of Services, the Service Provider shall procure at its sole cost and expense, and, during all periods as required by this Agreement, shall maintain in effect, the following policies of insurance:

- (I) General Liability Insurance. A policy of commercial general liability insurance, written on an "occurrence" basis, providing coverage with not less than \$1,000,000 per occurrence for bodily injury, personal injury & property damage and must include a separate endorsement naming the District, its officers, agents and employees as additional insureds ("General Liability Policy"). The General Liability Policy shall include coverage for the contractual liability assumed by the Service Provider pursuant to this Agreement.

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- (ii) **Vehicle Liability Insurance.** A policy of business vehicle liability insurance, written on an "occurrence" basis, with a combined single limit of not less than \$1,000,000 per accident for bodily injury and property damage ("Vehicle Liability Policy"). The Vehicle Liability Policy shall include coverage for owned, hired, and non-owned automobiles.
- (iii) **Workers' Compensation Insurance.** Workers' compensation insurance as required by State law and employer's liability insurance with coverage in an amount not less than \$1,000,000. Notwithstanding the insurer rating standards set forth in this Agreement, coverage provided by the State Compensation Insurance Fund shall be deemed, with respect to the workers' compensation insurance, to satisfy such insurer rating standards.

Section 3.2 Duration of Insurance. Except as provided in this Agreement with respect to insurance written on a "claims made" basis, the Service Provider shall maintain the insurance required pursuant to this Agreement in effect at least until the date that is one year following the termination and/or expiration of this Agreement.

Section 3.3 Insurer Rating Standards. Except as the District, in its sole discretion, may approve in writing, in advance, the insurance policies required pursuant to this Agreement shall be issued by one or more insurers licensed to do business in the State and having an A.M. Best Company rating of not less than "A-" and a financial size category of "X." If the insurance policies required by this Agreement, or any of them, are proposed to be issued from an entity, company, or program that is not rated by A.M. Best Company, the use of such insurance policies must be approved in advance, in writing, by the District prior to the start of the services described in this Agreement.

Section 3.4 Additional Insureds. The District, the District Board, and each individual member thereof, and the District's other officers, employees, and agents, shall all be named as additional insureds, to the extent of the Service Provider's acts and omissions in connection with this Agreement, on all insurance that the Service Provider is to have in effect pursuant to this Agreement, excepting the workers' compensation insurance.

Section 3.5 Waiver of Subrogation. The Service Provider hereby waives, on behalf of its insurers, any and all rights to subrogation that any such insurer may acquire by virtue of the payment of any loss.

Section 3.6 Service Provider Insurance is Primary. To the extent permitted by law, insurance policies required by this Agreement to be maintained by the Service Provider shall be primary and non-contributing with respect to any insurance or self-insurance programs covering the District, the District Board or individual members thereof, or the District's other officers, employees, or agents. The General Liability Policy shall be endorsed to provide that they are so primary and non-contributory.

Section 3.7 Evidence of Coverage. Prior to commencing the Scope of Services, the Service Provider shall provide to the District such duly-authorized and executed certificates of insurance, evidencing that the insurance policies to be maintained by the Service Provider, pursuant to this Agreement, are in effect (each a "Certificate of Insurance"), together with a copy of each endorsement to such insurance as is required pursuant to this Agreement. The delivery of such Certificates of Insurance

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and endorsements shall be a condition precedent to the Service Provider commencing any of the Scope of Services. As applicable, the Certificates of Insurance shall identify those who are additional insureds in accordance with this Agreement. Not less than ten (10) days prior to the expiration of any insurance policy that the Service Provider is required to maintain pursuant to this Agreement, the Service Provider shall provide updated Certificates of Insurance to the District evidencing the renewal of such policy.

Section 3.8 Notice of Change in Policies. Each Certificate of Insurance and corresponding policy of insurance required pursuant to this Agreement shall expressly require, or be endorsed to require, that the insurer notify the District not less than thirty days prior to any cancellation, except for cancellation due to non-payment of premium, in which case the insurer shall provide such notice not less than ten days prior to cancellation. Language in any Certificate of Insurance or policy of insurance to the effect that the insurer shall "endeavor" to provide such notice shall not be acceptable. Service Provider shall notify the District not less than thirty days prior to any termination, reduction in coverage, or expiration without renewal of any insurance policy required under this Agreement.

PART 4: INDEMNIFICATION BY SERVICE PROVIDER

Section 4.1 General Requirement. The Service Provider shall defend, indemnify and hold-harmless the District, the Governing Board and each member thereof, and the District's other officers, employees, and agents (collectively, not including the District, the "District Agents"), and each of them, from and against any and all claims, actions, damages, losses, costs, expenses and other liabilities (including, but not limited to, damage to property and injury, including death, of any person) arising from, pertaining to, or relating to, or directly or indirectly connected with: (1) the performance of the Scope of Services by the Service Provider or anyone working under or for the Service Provider; (2) actual or alleged negligence, recklessness, or willful misconduct of the Service Provider or anyone working under or for the Service Provider, in connection with the performance of this Agreement. Any defense of the District and/or District Agents shall be by qualified and appropriately experienced legal counsel reasonably acceptable to the District, but selected and retained by the Service Provider at its sole cost. The Service Provider's obligations pursuant to this Section shall survive the expiration or termination of this Agreement.

Section 4.2 Limitation on Service Provider Obligations. The Service Provider shall not be obligated pursuant to Sections 4.1 of this Agreement to the extent any claim, demand, action, judgment, damage, loss, cost or expense, or other liability results from the active negligence, sole negligence, or willful misconduct of the District or any District Agent. In each such event, the Parties shall be responsible and liable on a comparative basis.

Section 4.3 District Settlement of Disputes. Without jeopardizing or compromising any of its rights pursuant to this Agreement or as may be available in accordance with law, the District may settle any claim, demand, action or other legal proceeding on terms reasonably determined by the District Board to be in the best interests of the District. Prior to settling, the District shall attempt to obtain the Provider's consent to each such settlement, and the Service Provider shall not unreasonably deny, delay, or condition its approval. If the Parties are unable to agree on the particular terms for settlement of any dispute, with the result that the Service Provider does not consent to the settlement, the District may nonetheless settle the dispute if the District Board has determined that the settlement will be in the District's best interests.

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Section 4.4 Payment of Costs. The Service Provider shall reimburse to the District, or upon request of the District shall directly pay, any and all costs, expenses, penalties, judgments, settlements, and other amounts paid or owed by the District that are payable by the Service Provider pursuant to the indemnity provisions of this Agreement. The Service Provider shall pay each such amount not later than when the amount is due or within thirty days of receipt of a written invoice from the District requesting payment. Any late payments by the Service Provider shall accrue interest at the maximum legal rate.

Section 4.5 Survival of Obligations. With respect to any and all acts, omissions or incidents occurring prior to termination or expiration of this Agreement, the Service Provider's obligations pursuant to this Part 4 shall survive termination or expiration of this Agreement, regardless of whether the Service Provider has then completed all of the Scope of Services.

PART 5: TERMINATION OF AGREEMENT AND SERVICE PROVIDER SERVICES

Section 5.1 District Termination for Convenience. The District, without need for cause, may terminate this Agreement, with respect to some or all of the Scope of Services, by providing thirty (30) days written notice of termination to the Service Provider. Such termination shall be effective immediately after fifteen (15) days after the Service Provider's receipt of the notice of termination.

Section 5.2 District Termination for Breach of Warranties. If the District at any time determines that any of the representations and/or warranties of the Service Provider set forth in this Agreement are materially untrue or incorrect, the District shall have the right to terminate this Agreement immediately and without liability (including, without limitation, any liability for paying any further compensation to the Service Provider), and the Service Provider shall be liable to the District for all costs, expenses and damages arising therefrom. The Service Provider's representations and warranties pursuant to this Agreement shall survive termination of this Agreement, regardless of whether at such time the Service Provider has fully completed all Scope of Services.

Section 5.3 District Termination for Cause. In addition to other termination rights it may have pursuant to this Agreement, the District may give the Service Provider written notice of the District's intent to terminate this Agreement for cause if the District reasonably determines that the Service Provider has failed to perform some or all of the Scope of Services in a satisfactory and timely manner or if the Service Provider otherwise has breached any of its obligations pursuant to this Agreement. The Service Provider shall have ten (10) days following receipt of the notice of intent to terminate to cure its failure or breach, or to make arrangements satisfactory to the District for cure of its failure or breach, and, if the Service Provider fails within such ten-day period to do so, the District may terminate this Agreement by giving written notice of termination to the Service Provider, and the termination shall be effective immediately upon receipt of the notice of termination by the Service Provider. Nothing in this Agreement shall be deemed or construed as a waiver by the Service Provider of any rights it may have in regard to a wrongful termination by the District.

Section 5.4 Service Provider Termination for Cause. The Service Provider may give the District written notice of the Service Provider's intent to terminate this Agreement for cause if the Service Provider reasonably determines that the District has breached any of its material obligations pursuant to

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this Agreement. The District shall have: (i) fourteen days following receipt of the notice of intent to terminate to cure (or to make arrangements satisfactory to the Service Provider for cure of) a breach arising from any failure by the District to pay any undisputed amount owed to the Service Provider; and (ii) thirty days following receipt of such notice to cure (or to make arrangements satisfactory to the Service Provider for cure of) a breach of any other nature. If the District fails within the applicable period to cure a breach (or to make arrangements satisfactory to the Service Provider for cure of such breach), the Service Provider may terminate this Agreement by giving written notice of termination to the District, and the termination shall be effective immediately upon receipt of the notice of termination by the District. Nothing in this Agreement shall be deemed or construed as a waiver by the District of any rights it may have in regard to a wrongful termination by the Service Provider.

PART 6: GIVING OF NOTICE

Section 6.1 General Requirements. Any and all demands and notices required or permitted to be given pursuant to this Agreement (each a "Notice") shall be in writing and shall be given or served in accordance with this Part 6.

Section 6.2 Methods of Delivery. Each Notice shall be sent via: (i) personal delivery (with name and signature of recipient obtained on delivery receipt); (ii) registered or certified United States mail (postage pre-paid and return receipt requested); (iii) FedEx, U.P.S. or other reliable, private delivery service (with name and signature of recipient obtained on electronic or other delivery receipt); or (iv) electronic mail (e-mail) transmission (with printed confirmation of transmission from the sender's machine or device retained in the sender's files and a copy of such confirmation provided to recipient upon request, and with original of the Notice deposited into the United States mail, first-class postage prepaid, within 12 hours after transmission). Neither Party may unreasonably refuse to accept delivery of any Notice in an attempt to avoid the giving or service of the Notice, and any such refusal by a Party shall be deemed and construed as a material breach of such Party's obligations pursuant to this Agreement.

PART 7: INTERPRETATION OF AGREEMENT

Section 7.1 Fair and Reasonable Interpretations. Prior to execution and delivery of this Agreement, each Party has received, or had unqualified opportunities to receive, independent legal advice from its legal counsel with respect to the advisability of executing this Agreement and the meaning of the provisions herein. Therefore, the provisions of this Agreement shall be construed based on their fair and reasonable meaning, and not for or against any Party based on whether such Party or its legal counsel was primarily responsible for drafting this Agreement or any particular provision herein.

Section 7.2 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties pertaining to the performance of the Scope of Services by the Service Provider, and all prior and contemporaneous agreements, representations and understandings of the Parties relating to such subject matter, whether oral or written, are hereby superseded and replaced.

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Section 7.3 Modifications of Agreement. This Agreement may be modified only by means of duly-approved written agreement executed and delivered by both Parties.

Section 7.4 Governing Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State. Any action, arbitration, or other proceeding arising from this Agreement shall be initiated and conducted only in the County of Los Angeles, California.

Section 7.5 Successors and Assigns. Except as to its affiliates, the Service Provider may not assign this Agreement without the express written consent of the District, and any attempt to do so shall be null and void. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding on, the Parties' authorized successors and assigns.


PART 8: EXECUTION OF AGREEMENT

Section 8.1 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more copies of this Agreement having original signatures of both Parties.

Section 8.2 Due Authority. Each person signing this Agreement on behalf of a Party represents and warrants that he or she has been duly authorized by such Party to sign, and thereby bind such Party to, this Agreement.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as evidenced by their signatures below.

GradeSlam, Inc.
[SERVICE PROVIDER]

By: 
Print Name: Philip Cutler
Title: Chief Executive Officer
Fed. Tax ID No: Foreign TIN 81048903

Date Signed: 01/07/2020

William S. Hart Union High School District

By: 
Ralph Peschek
[Title] Chief Financial Officer

Date Signed: 01/08/2020

EXHIBIT "A"
Scope of Services

[If additional space is required, please complete on a separate page that is initialed by both Parties]

GradeSlam, Inc. will provide chat-based tutoring services, actionable insights, and student licenses through their online platform for 70s students studying at Canyon High School.

GradeSlam, Inc. will provide Canyon High School with teacher user accounts, administrator accounts, at no additional cost.

GradeSlam, Inc. will execute professional development and student orientations for the students participating in the program.

GradeSlam, Inc. will provide routine check-ins and extra training as needed.

GradeSlam, Inc. will provide marketing materials and marketing strategies to ensure student engagement grows.

This scope entails training to take place on Canyon High school campus on various days throughout the school year as needed for training.

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EXHIBIT "B"
Service Provider Compensation

(A) Service Provider Fee (Check the boxes as applicable):

In exchange for satisfactory performance of the Scope of Services, the District shall pay to the Service Provider the compensation set forth below, which shall be all-inclusive, full and final compensation to the Service Provider for the Scope of Services provided, and shall include any and all overhead, profit and other amounts potentially payable to Service Provider for the specified Scope of Services:

- ☐ Lump sum of \$ 2,450.00 to be paid by ☐ task, allocated as set forth in the Payment Schedule below, or ☒ in a one-time payment made upon completion of the Scope of Work.
- ☐ Other: _____

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EXHIBIT "C"
Noncollusion Declaration

NONCOLLUSION DECLARATION

Event : Tutoring for Canyon High School students for the 2019-2020 school

Service Provider: GradeSlam, Inc.

The undersigned hereby declares:


I am the Chief Executive Officer (insert position) of GradeSlam, Inc. (insert Service Provider name).

I represent and warrant that: (i) Service Provider has not employed or retained any company or person (excepting any bona fide employee working solely for Service Provider) to solicit or otherwise cause the District to enter into the Agreement for Service Provider Services ("Agreement"); (ii) Service Provider has not paid, agreed to pay, or otherwise provided to, any company or person, including, but not limited to, any District officer, employee or agent (but excepting any bona fide employee working solely for Service Provider), any fee, commission, percentage, brokerage fee, gift, favor, or other consideration contingent upon or resulting from the District entering into the Agreement; and (iii) to the Service Provider's knowledge, the making of the Agreement shall not result in any person having any conflict of interests pursuant to Government Code Section 1090, the California Political Reform Act (Government Code Section 87100 et seq.), or the California common law.

I hereby represent that I have the full power to execute, and do execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on January 7th, 2020 [date], at Montreal [city], Quebec [state].

Representative Name: Philip Cutler

Representative Signature: 

Date Signed: 01/07/2020