

High School Program Implementation & Services Agreement

Client: North Hunterdon-Voorhees
Regional High School District

Agreement No.: 17-333

Att: Steven Schultz
District Coordinator, HIB & Professional Development

Date: July 26, 2018

THIS PROGRAM IMPLEMENTATION AND SERVICES AGREEMENT (this "Agreement") is entered into as of the 1st day of **September** 2018, (the "Effective Date") by and between Evolution Labs, Inc., a New Jersey corporation ("EL"), and **North Hunterdon-Voorhees Regional High School District** (the "Client").

1. Scope of Programs and Related Services. Subject to the terms and conditions set forth in this Agreement, EL shall provide Client with the program(s) selected by Client as indicated on SCHEDULE A (the "Selected Programs/Modules") annexed to this Agreement and made a material part hereof. Each such Program/Module shall be delivered in accordance with the implementation schedule annexed to this Agreement as SCHEDULE B (the "Implementation Schedule") and made a material part hereof.

(a) **Program Goals.** As further provided below and in the annexed Schedule A, the Programs are designed to help Client communicate HIB (Harassment, Intimidation, Bullying) and other beneficial content to its students and parents of students (collectively, the "Constituents"),

(b) **Program Tools and Data.** The Programs shall include (i) use of EL's core proprietary and non-proprietary software, web and mobile applications, hardware, documentation, information systems and other technologies and tools (the "Program Tools"), (ii) configuration and testing of the Program Tools by EL, (iii) training of Client's personnel in the use of the Program Tools, (iv) gathering of data generated by Program Tools (including data about Client's Constituents and their participation/engagement in the Programs) (the "Program Data"), (v) assessment and analysis of Program Data by EL and (vi) remote access by Client (at all times and on all days throughout the term hereof) to all Program Data generated by the Program Tools.

(c) **Program Content.** EL shall (i) design, prepare, collect and configure all of the graphics, text, photos, images, scripts, information, data and other content or information to be embedded in or included with each Program (the "Program Content"), (ii) update such Program Content as Client and EL reasonably deem necessary to meet the Program Goals, and (iii) obtain Client's approval of all Program Content and the design of such content before it is conveyed or otherwise made available to Client's Constituents. Programs/modules will consist of custom content with word counts not exceeding 12,000 words, in addition to any harvested content (internally from the client and externally from Client-approved sources).

In addition, Client will have access to use of EL-owned editorial features, video segments and Heuristics™ modules.

(d) **Program Features.** Depending on the programs/modules selected, certain features may be enabled or disabled at the request of the Client, and as recommended by EL for optimal program performance. Features include:

- Content Library: access to EL's full content library for use in the program(s)
- Heuristics™: Interactive immersion modules to enhance content engagement
- Dynamic Deployment Engine™: Deploy the appropriate content to each user.
- Video Embedment: Videos on various topics, areas of interest, tips, majors, clubs, etc.
- Ambassadors: Client-approved students (or parents, in the Parent program(s)) who contribute content and social media activity to the program(s)
- Resource links: links to appropriate and Client-approved internal and external resources
- Promotion: EL will suggest and digitally prepare appropriate assets to help promote the programs(s)
- Chat Interface: to facilitate communication between Client and Constituents
- Recursive Reflections™: Periodic deployment of push notifications to encourage learning reflection
- Pulse Survey™ Questions: survey questions that may be deployed to program users
- Reporting Center: web access to program engagement by authorized Client staff

(e) **Program Communications.** Depending on the Program(s) chosen by Client hereunder, EL shall convey the Program Content or otherwise make it available to the Constituents via email, web pages, text, application push notification, custom links, telephone, or other means of communication (the "Constituent Communications"). The Constituent Communications shall not contain any direct references to EL or show any third party advertisements, unless approved by Client. Constituent Communications shall only be targeted to Constituents who have either opted in to receive, or have not opted out from receiving, any such information, or to Constituent populations provided by Client to EL. EL may request, for internal reporting or research purposes, basic demographic information including, but not limited to, ethnicity, age, gender, major and academic year from Constituents who have opted in to receive and engage in program content.

2. Client Responsibilities. Client acknowledges that the timely implementation and ongoing performance of the Program(s) by EL shall depend upon, or be influenced by, Client's timely delivery to EL of any and all Program Content and other assistance reasonably required by EL (including participation at the Set-Up Meetings pursuant to Section 3 below) to develop the Program(s) and otherwise tailor them to achieve the Program Goals. Client represents and warrants to EL that Client has and shall continue to have the right to provide any and all such Program Content that it has provided or shall provide to EL in connection with this Agreement.

Certain additional Client responsibilities for respective EL Programs/Modules, as noted below:

Client to include prominent link(s) to the Program(s) on client's website(s) for the duration of the program run. EL to provide link ideas/suggestions.

Client shall actively promote, drive awareness and encourage engagement in the Program(s) to the Constituents for the duration of the program run.

3. Set-Up Meetings. After the execution of this Agreement, Client and EL shall meet (at a location and on a date and time mutually acceptable to them) for an initial meeting and, if necessary, thereafter for one or more follow-up meetings (the "Set-Up Meetings"). At the Set-Up Meetings, EL and Client shall discuss and confirm the Implementation Schedule, Features, Program objectives and other material matters relating to the operability and delivery of the Programs (including the design, preparation and configuration of the Program Content). EL shall then, subject to Client fulfilling its obligations under Section 2, launch the Programs by their respective launch dates set forth opposite the Program names in the Implementation Schedule. Either party may reschedule a launch date with the consent of the other party (which consent shall not be unreasonably withheld or delayed).

4. **Pricing and Payment.** In consideration for the Programs and services to be provided to Client under this Agreement, Client shall pay to EL the fees and associated charges set forth in SCHEDULE A annexed to this Agreement and made a material part hereof. Unless specified and agreed upon otherwise, each annual fee shall be due and payable with signed contract.
5. **Service Level Warranty.** EL shall maintain sufficient scalability of the Program Tools to handle concurrent usage of the Program(s) by Constituent populations. EL shall employ adequate RAID systems (as that term is generally understood in the industry in which EL's Programs perform) to minimize service interruption. EL also warrants that its services hereunder shall be operational 97.7% or greater of the time during which Client's Programs are active. Service outages exceeding 2.3% of Client's active Program time shall be reimbursed to Client at the rate of one additional day of Program service for each whole or partial day of service during which there was a service outage exceeding 2.3%.
6. **Term and Termination.** The term of this Agreement shall commence on the Effective Date and continue thereafter for a period of 1 (one) year from and after the Effective Date (the "Term"), unless earlier terminated as provided for in this Section 6. Client may terminate any Program or service being provided under this Agreement, at any time prior to the expiration of the Term, upon thirty (30) days prior written notice to EL, after which time EL shall have no further obligations with respect to such Program or service; provided, however, that no such termination by Client shall operate to terminate this Agreement or to relieve Client of its payment obligations set forth in Section 4 above or in SCHEDULE A to this Agreement, whether or not such payment obligations arise or are due before, on, or after the date of such termination. EL may terminate this Agreement due to a material breach of this Agreement by Client which has not been cured within thirty (30) days after written notice thereof. Notwithstanding anything herein to the contrary, Sections 4, 7, 8, 9, 10, 11, 12 and 13 and SCHEDULE A to this Agreement shall survive the expiration or termination of this Agreement.
7. **Ownership of Work.** EL acknowledges that Program Content supplied by Client to EL under this Agreement shall remain the sole property of Client. Notwithstanding anything to the contrary in the foregoing, all EL Tools (as defined below) shall remain the sole and exclusive property of EL. Subject to Client's full compliance with the terms of this Agreement, Client is hereby granted a limited non-exclusive and non-transferable license solely to use the EL Tools during the Term to the extent reasonably necessary for the full use of the Programs by Client and its Constituents. As used herein, the term "EL Tools" shall mean the Program Tools, Program Content (excluding Program Content supplied by Client to EL under this Agreement) and other items (i) used by EL as work tools to develop or deliver the Programs and related services under this Agreement, and/or (ii) created or obtained by EL prior to the Effective Date or during the Term for use by EL's clients, customers and contractors on a non-exclusive basis.
8. **Confidentiality.** (a) The parties acknowledge that they each may be exposed to or acquire Confidential Information (as defined below) of the other party. Each party agrees to hold such Confidential Information (both during and after the Term) in strict confidence and not to copy, reproduce, sell, assign, license, market, transfer, give or otherwise disclose such Confidential Information to third parties, or to use such information for any purpose other than for the purpose of performing such party's obligations under this Agreement. Each party shall use reasonable efforts to advise the other immediately in the event that it learns or has reason to believe that a violation of this Section has occurred or is likely to occur, and will reasonably cooperate with the other party in seeking injunctive relief or other appropriate remedies as provided below. In addition, neither party shall reverse engineer, disassemble, decompile, or duplicate, or attempt to reverse engineer, disassemble, decompile, duplicate, any Confidential Information of the other party.

(b) The term "Confidential Information" means any information received by one party under this Agreement of or relating to the other party that either (i) is clearly marked or referred to as "confidential" or "proprietary" or identified in a writing delivered to the party receiving the information, or (ii) a reasonable person in the position of the party receiving the information would understand to be of a confidential or proprietary nature. Confidential Information includes, without limitation, the economic and other terms of this Agreement, and information of or about the other party relating to its financial and legal matters, business processes, computer programs, techniques, know-how, algorithms, source code (including in the case of EL, the EL Tools), information technology systems and requirements, products, services, pricing, sales and marketing plans, target markets, clients and prospective clients, suppliers, and/or personnel. Confidential Information does not include information that (i) is or hereafter becomes part of the public domain other than as a result of a breach of this Agreement or other wrongful act or omission by the party receiving the Confidential Information, (ii) the other party authorizes, in writing, for release by the party receiving the Confidential Information, or (iii) is disclosed pursuant to an order of a court or other governmental body; provided, however, that if a party is lawfully required to disclose Confidential Information, it shall immediately notify the other party and cooperate in good faith with the other party in taking protective actions against such disclosure as the other party may reasonably request.

9. Injunctive Relief. In the event of a breach or threatened breach by Client of any of the provisions of Sections 7 or 8 of this Agreement, Client acknowledges that EL will be irreparably harmed and therefore Client agrees that EL shall be entitled to an injunction or similar equitable relief from any court of competent jurisdiction restraining Client from committing or continuing any such breach or threatened breach or granting specific performance of any act required to be performed by Client under any of such provisions, without the necessity of showing any actual damage or that money damages would not afford an adequate remedy and without the necessity of posting any bond or other security. Nothing herein shall be construed as prohibiting EL from pursuing any other remedies at law or in equity which it may have with respect to any such breach or threatened breach.

10. Indemnification. Each party shall defend, indemnify, and hold harmless the other, and its employees, officers, directors, shareholders, subcontractors, agents, successors and permitted assigns, from and against any and all liabilities, obligations, damages, deficiencies, costs and expenses (including, without limitation, reasonable attorneys' fees and the costs to enforce these indemnification provisions) arising out of or relating to any third-party causes of action, claims or demands based on any breach by the indemnifying party of any of its representations, warranties, covenants or obligations contained in this Agreement, or the inaccuracy of any representation of the indemnifying party contained in this Agreement.

11. Limitations. (a) Notwithstanding anything to the contrary herein, neither party shall have liability under this Agreement or otherwise for consequential, exemplary, special, indirect, incidental or punitive damages even if it has been advised of the possibility of such damages. The aggregate liability of EL to Client or to any other person or entity for any cause of action, claim or demand (whether under contract law, tort law or other legal theory) shall be limited to the fees actually paid to EL by Client under this Agreement.

(b) The warranties set forth in this Agreement by EL are limited warranties and are the only warranties made by EL. EL disclaims, and Client hereby waives, all other warranties, express or implied, including, but not limited to, warranties of merchantability and fitness for a particular purpose. EL does not warrant that Programs, EL Tools and related services will meet Client's requirements or that the operation of such Programs, EL Tools and related services will be error-free.

12. Notices. All notices, payments, and other communications required or permitted under this Agreement shall be in writing and sent to the party for whom it is intended personally, by telecopy, by registered or certified mail, postage prepaid, or by Federal Express or any other nationally recognized overnight courier service, as follows:

If to EL, to:

Evolution Labs, Inc.
83 South Street
Morristown, NJ 07960
Att: Rebecca Wang

If to Client, to:

North Hunterdon-Voorhees Regional High School District
1445 State Route 31
Annandale, NJ 08801
Att: Steven Schultz

Any of the above addresses may be changed at any time by notice given as provided above; provided, however, that any such notice of change of address shall be effective only upon receipt. All notices, requests or instructions given in accordance herewith shall be deemed received on the date of delivery, if hand delivered, telecopied, or sent by Federal Express or any other recognized overnight courier service, and three (3) business days after the date of mailing, if mailed by certified mail, return receipt requested.

13. Miscellaneous. This Agreement, together with the Schedules annexed to this Agreement, represents the entire understanding of EL and Client with respect to the subject matter of this Agreement and supercedes any and all other prior and contemporaneous agreements and understandings, implicit or express, written or oral, between EL and Client. The Schedules to this Agreement are integral and material parts of this Agreement, and each reference to this Agreement herein or in such Schedules shall mean and include this Agreement and all Schedules hereto. This Agreement may not be amended or otherwise modified, and no provision of this Agreement shall be deemed waived by any party to this Agreement, except to the extent expressly set forth in a writing signed by the party to be bound thereby. This Agreement may not be assigned by Client without the prior written consent of EL. Any assignment or attempted assignment in violation of the preceding sentence shall be null and void ab initio. EL and Client each agrees that this Agreement is the product of negotiations between the parties, each of whom had an opportunity to consult with counsel and had an opportunity to participate in, and did participate in, the drafting of this Agreement. Accordingly, any ambiguities in this Agreement shall not be construed in favor of or against either party. This Agreement and all disputes or controversies arising from or relating to this Agreement shall be governed by the laws of the State of New Jersey, without giving effect to the conflicts-of-laws provisions thereof. EL and Client each hereby irrevocably submits to the exclusive and mandatory jurisdiction of any New Jersey State or Federal court sitting in the County of Morris, State of New Jersey over any claim, suit, action or proceeding arising from or related to this Agreement, and EL and Client each hereby irrevocably and fully waives and agrees not to assert the defenses of inconvenient forum, improper venue or lack of personal jurisdiction in connection with any such claim, suit, action or proceeding brought in any such court. EL and Client each agrees to accept service of process in any manner permitted by any such court. EL may identify Client as its client, in advertising, publicity, or similar materials distributed to prospective clients of EL. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

The parties hereto have executed this Agreement as of the date first written above:

For Evolution Labs, Inc.



Peter Kraft, President

Authorized signature, print name and title

For North Hunterdon-Voorhees Regional High School District

Authorized signature, print name(s) and title(s)

Second Authorized signature(if required), print name and title

SCHEDULE A
Selected Programs/Modules

Subject to the terms and conditions of this Agreement, EL shall provide to Client, and Client shall pay EL for the delivery and implementation by EL of each of the Programs indicated below by an "X" placed in the box immediately to the left of the Program name and such fees as indicated.

Selected	Program	Description	Set-Up Fee	Annual Fee
X	S360	To deploy HIB and other critical success information to students	\$0	\$2,500
X	P360	To deploy HIB and other critical success information to parents of students	\$0	\$2,500
				\$5,000

SCHEDULE B
Implementation Schedule

The Programs/Modules referenced below shall launch on or around the date(s) indicated below:

Program	Implementation
S360	Approx. Sept 1, 2018
P360	Approx. Sept 1, 2018