

Distributed Learning Agreement

THIS AGREEMENT is made as of the 30th day of June 2014

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the Minister of Education

(the "Province")

OF THE FIRST PART

AND:

Independent School Authority, a society incorporated under the Society Act under Certificate of Incorporation No. XXX, and having an office at ADDRESS

(the "Authority")

OF THE SECOND PART

Background

- A. Pursuant to section 8.1 of the *Independent School Act*, an independent school authority may provide all or part of an educational program by means of distributed learning only with the prior agreement of the Minister of Education.
- B. The Authority wishes to provide distributed learning for one School Year.
- C. This Agreement constitutes the Minister of Education's agreement for the Authority to provide an educational program by means of distributed learning as described in Schedule "B" for one School Year.
- D. The Authority agrees to the terms set forth in this Agreement.

The parties agree as follows:

Definitions

1.01 In this Agreement and in the Background section above,

“Certified Teacher” has the meaning given to that term in the *Independent School Act*;

"Distributed Learning" means a method of instruction that relies primarily on indirect communication between students and teachers, including internet or other electronic-based delivery, teleconferencing or correspondence;

"Distributed Learning Standards" are the standards set out in Schedule "A";

“Educational Standards Order” means Ministerial Order 41/91 enacted pursuant to the *Independent School Act*, as that order is amended from time to time;

“Event of Default” has the meaning given to that term in section 13.01;

“Foundation Skills Assessment” or “FSA” means the set of reading, writing and numeracy tests established by the Province and administered by the Authority each School Year to students in grades 4 and 7 to measure individual student performance;

“Fully Enrolled Learner” means a Learner in any grade from kindergarten to grade 9 taking an educational program as set out in section 4 of the Educational Standards Order with one Distributed Learning school or a Learner in grade 10, 11 or 12 enrolled in 8 or more four credit courses with one Distributed Learning school;

“Graduation Program Order” means Ministerial Order 302/04 enacted pursuant to the *School Act*, R.S.B.C. 1996, c. 412, as that order is amended from time to time;

“Grant Payments Order” means Ministerial Order 37/04 enacted pursuant to the *Independent School Act*, as that order amended from time to time;

"*Independent School Act*" means the *Independent School Act*, R.S.B.C. 1996, c. 216, as amended from time to time;

"Inspector of Independent Schools" means the Inspector of Independent Schools appointed under section 2 of the *Independent School Act*;

"Learner" means a person, including a non-graduated adult, enrolled in an educational program provided by the Authority by means of Distributed Learning, but does not include a person who is younger than School Age;

“School Age” means the age during which a person is deemed to be of school age under subsection 1(2) of the *Independent School Act*;

"School Year" means the period beginning on July 1 and ending on the following June 30;

“SLP” means, for purposes of Schedule “A”, an electronic or paper based student learning plan prepared by the teacher for each Learner that includes content, learning activities, resources and assessment opportunities and links to provincial learning outcomes; and

"Term" means the period referred to in section 2.01.

Term

2.01 The term of this Agreement will commence on July 1, 2014 and will end on June 30, 2015, unless extended pursuant to section 3.01 or earlier terminated pursuant to section 13.02, section 13.03 or section 13.06.

Extension

3.01 The Province may from time to time extend the Term by giving the Authority written notice prior to April 30 of the year in which the Term ends. Any such notice will specify the term of the extension. Unless the Authority advises the Province, in writing, within 30 days of the date on which the notice was given, that the Authority does not wish the Term to be extended, the definition of “Term” will be deemed to have been amended accordingly.

3.02 If the Agreement is not extended by the Province in accordance with section 3.01, then the Agreement will terminate at the end of the Term. For greater certainty, (i) the Authority's obligations under this Agreement will continue until the end of the Term, and (ii) no grant or portion of a grant payable under the Grant Payments Order with respect to Learners will be paid after the end of the Term.

Authority's Representations and Warranties

4.01 The Authority represents and warrants to the Province, with the intent that it will rely thereon in entering into this Agreement and throughout the continuance of this Agreement, that:

- (a) it is an authority within the meaning of section 1(1) of the *Independent School Act*;
- (b) it has the power and capacity to accept, execute and deliver this Agreement;
- (c) all information, statements, documents, records and reports furnished or submitted by the Authority to the Province in connection with this Agreement are true and correct;

- (d) all necessary proceedings will have been taken and done and all statutory and contractual approvals will have been obtained to authorize the execution and delivery of this Agreement by the Authority;
 - (e) an educational program will only be provided to Learners resident in Yukon if the Authority has a current and subsisting agreement with the Yukon Department of Education for the provision of educational programs.
 - (f) this Agreement has been legally and properly executed by the Authority and is legally binding upon and enforceable against the Authority in accordance with its terms; and
 - (g) the activities contemplated by this Agreement will not constitute a breach by the Authority of any law or of its constating documents.
- 4.02 All statements contained in any certificate, application or other document delivered by or on behalf of the Authority to the Province under this Agreement or in connection with any of the transactions contemplated under this Agreement will be deemed to be representations and warranties by the Authority under this Agreement.
- 4.03 All representations, warranties, covenants and agreements made herein and all certificates, applications or other documents delivered by or on behalf of the Authority are material and will conclusively be deemed to have been relied upon by the Province and will continue in full force and effect during the continuation of this Agreement.

Approved Educational Program

- 5.01 The Authority may only deliver to Learners the Distributed Learning educational programs or courses that are described in Schedule "B".
- 5.02 If the Authority proposes to add a course to the educational program described in Schedule "B" or change the educational program described in Schedule "B" in a significant manner, the addition or amendment must, subject to section 5.03, first be approved by the Province.
- 5.03 The Authority does not require prior approval within the meaning of section 5.02 if it intends no longer to offer a particular Distributed Learning course, subject to providing for the continuation and completion of in-progress Distributed Learning courses.
- 5.04 The Authority will provide
- (a) to Learners enrolled in kindergarten to grade 9, an educational program that includes the required areas of study set out in section 4 of the Educational Standards Order ; and.

- (b) if the authority offers grades 10, 11, and 12, for all Learners enrolled, a sufficient number and selection of courses to enable each Learner to meet the requirements for graduation set out in the Graduation Program Order.
- 5.05 The Authority must work to achieve an average differential between the final school marks for Learners enrolled with the Authority and the marks from provincial examination programs for those Learners that does not exceed the amount set out in Schedule “A”

Province’s Obligation

- 6.01 Once the parties have entered into this Agreement, the Province will fund the Authority, if it is an independent school authority that has been issued a certificate of either a group 1 or group 2 classification for its independent school(s), for Distributed Learning educational programs and courses as set out in the Province’s policy from time to time.

Compliance with Legislation

- 7.01 The Authority agrees that it will comply with all British Columbia legislation, including but without limiting the *Independent School Act* and all regulations and orders made under that statute, all policies of the Province and the Distributed Learning Standards.

Commitment to Quality

- 8.01 The Authority agrees that it will provide the highest quality, interactive and engaging learning opportunities and assessments that are suited to students' individual needs who take all or part of their educational program through Distributed Learning.
- 8.02 The Authority acknowledges that its educational programs delivered through Distributed Learning will be evaluated and inspected in accordance with the Distributed Learning Standards and agrees to meet, or exceed these Distributed Learning Standards.
- 8.03 The Authority agrees that it will align its website with criteria established in discussion with the Province.

Special Education Funding

- 9.01 If the Authority makes an application for special education funding for Distributed Learning Learners in Level 1, 2 or 3, as defined in the Province’s policy from time to time, the Authority must apply the approved funding for supplementary supports for Learners with special needs.

Payments and Reimbursement

- 10.01 If the Authority uses a third party to provide educational services, materials, resources or supplies to a Learner, the Authority must:
- (a) ensure that the educational services, materials, resources or supplies are part of the educational program supervised by a Certified Teacher employed by the Authority;
 - (b) directly retain the services of the third party;
 - (c) not authorize the Learner, the parent or guardian of the Learner or any other person, to retain the services of the third party on behalf of the Authority (but for greater certainty the Authority may authorize the Learner or the parent or guardian of the Learner to pay the third party for the third party's services);
 - (d) to the extent reasonably possible ensure that in providing the educational services, materials, resources or supplies the third party complies with all applicable laws; and
 - (e) ensure that, where required by the *Criminal Record Review Act*, that all third party service providers undergo a criminal record review
- 10.02 For purposes of section 10.01, academic tutoring services are not included in the educational services for which an Authority may use a third party unless the tutorial services are required as a part of an educational program for a Learner with special needs. .
- 10.03 The Authority may provide financial assistance to Learners or to the parents or guardians of Learners for a portion of Internet connections fees only if the Learner requires an Internet connection to participate in an educational program delivered in whole or in part through Distributed Learning.
- 10.04 Subject to sections 10.01 and 10.03, the Authority agrees that it will only use funds in accordance with this Agreement and, without limiting the generality of the foregoing, the Authority:
- (a) may not provide financial payments or reimbursements to a Learner or the parent or guardian of a Learner;
 - (b) may not use any of the funding provided by the Province as an incentive to have a Learner enroll in an educational program delivered through Distributed Learning; and
 - (c) may lend, but may not give, equipment that is part of the educational program, such as computers, to a Learner or the parent or guardian of a Learner.
- 10.05 The Authority agrees to limit payments, reimbursements, and financial assistance as set out in the Province's policy from time to time.

- 10.06 In addition to any right of the Province under section 13.01 to terminate this Agreement, if the Authority fails to comply with any provision of this Agreement the Province may require that the Authority return to the Province any part of the funding paid to the Authority.

Records and Reports

- 11.01 The Authority must use the Student Achievement Data Exchange (SADE) system to provide the Province with complete, current, and accurate information about the Distributed Learning program(s).
- 11.02 Upon request by the Province, the Authority will provide all information necessary to demonstrate, to the Province's satisfaction, that:
- (a) the funds provided under this Agreement are being used to support Learners using services, courses or programs through Distributed Learning; and
 - (b) the process used to determine the amount of funding to be allocated to direct and indirect costs by the Authority including, but not limited to instruction and technology, is transparent.

Foundation Skills Assessments

- 12.01 The Authority must work to achieve 100% participation rate of Learners who take all or part of their educational program through Distributed Learning in either the Foundation Skills Assessments or an equivalent assessment to be determined by the Province.

Events of Default and Termination

- 13.01 The Province may provide written notice to the Authority if either of the following Events of Default occurs:
- (a) the Authority fails to comply with any provision of this Agreement and has not rectified such failure in a timely and appropriate manner; or
 - (b) any representation or warranty made by the Authority in this Agreement is materially untrue or incorrect.
- 13.02 If an Event of Default is not cured within 90 days of the date of the written notice referred to in section 13.01, the Province may terminate this Agreement by further written notice to the Authority, in which case this Agreement will terminate on the date specified by the Province in such notice.
- 13.03 Notwithstanding sections 13.01 and 13.02, the Province may also terminate this Agreement by written notice if either of the following occurs:

- (a) the Distributed Learning Program offered by the Authority is in its first year of operation and the number of Fully Enrolled Learners of School Age on September 30 of the current School Year is fewer than 10; or
 - (b) the number of Fully Enrolled Learners of School Age on September 30 of the current School Year is fewer than 10 and the number of Fully Enrolled Learners of School Age was fewer than 10 on September 30 of the previous School Year.
- 13.04 Termination under section 13.03 will have effect as of the date specified in the Province's notice and does not require prior notice under section 13.01.
- 13.05 If the Province provides notice of termination pursuant to either section 13.02 or section 13.03,
- (a) the Authority's obligations under this Agreement will continue until the date of termination specified in the Province's notice of termination;
 - (b) no grant or portion of a grant payable under the Grant Payments Order with respect to Learners will be paid after the date of termination specified in the Province's notice of termination and
 - (c) the Authority will ensure that any Learners enrolled with the Authority will be transferred in an orderly manner to another educational institution to ensure that there is no interruption of their educational programs.
- 13.06 The Authority may terminate this Agreement by no fewer than 30 days prior written notice to the Province, provided that:
- (a) the Authority does not terminate without providing for the continuation and completion of in-progress Distributed Learning educational programs and courses;
 - (b) in the written notice provided to the Province the Authority advises how it intends to meet the obligation in (a); and
 - (c) contemporaneously with the written notice provided to the Province, the Authority informs each Learner or the parent or guardian of each Learner that Distributed Learning will no longer be offered to Learners as of the date on which the termination of this Agreement takes effect.
- 13.07 Notwithstanding section 13.06, if no individuals are enrolled or registered in a Distributed Learning educational program or course offered by the Authority at the time it provides written notice to the Province, termination will have effect as of the date specified in the notice.

Notices

14.01 Any notice or other document that either party may be required or may desire to give to the other will be conclusively deemed validly given to and received by the addressee, if delivered personally then on the date of delivery, if mailed then on the fifth business day after the mailing the same by prepaid post addressed, if by facsimile transmission then when so transmitted or if by electronic mail then when capable of being retrieved by the addressee, at the addresses:

if to the Province:

Ministry of Education
Office of the Inspector of Independent Schools
Governance, Legislation and Regulation Division
2nd Floor - 620 Superior Street
PO Box 9153 Stn Prov Gov
Victoria, BC V8W 9H1
Facsimile: (250) 953-4908

and if to the Authority:

AUTHORITY CONTACT INFORMATION

14.02 Either party may, from time to time, advise the other party in writing of any change of address or contact person of the party giving such notice, and the information specified will, for the purposes of section 14.01, be conclusively deemed to be the address and contact person of the party giving such notice.

NON-WAIVER

15.01 No term or condition of this Agreement and no breach by the Authority of any such term or condition will be deemed to have been waived unless such waiver is in writing signed by the Province.

15.02 The written waiver by the Province of any breach by the Authority of any term or condition of this Agreement will not be deemed a waiver of such term or condition or of any subsequent breach by the Authority of the same or any other term or condition of this Agreement.

ENTIRE AGREEMENT

16.01 This Agreement and the Schedules to this Agreement constitute the entire Agreement between the parties with respect to the subject matter of this Agreement.

INTERPRETATION

17.01 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

- 17.02 The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of any provision of this Agreement.
- 17.03 Any reference to a statute, regulation or order in this Agreement, whether or not that statute has been defined, includes all regulations and orders made at any time under or pursuant to that statute and any amendment to those enactments.
- 17.04 In this Agreement wherever the singular or neuter is used it will be construed as if the plural or masculine or feminine, as the case may be, had been used where the context so requires.
- 17.05 The Schedules to this Agreement are an integral part of this Agreement as if set out at length in the body of this Agreement.
- 17.06 No amendment or modification to this Agreement will be effective unless it is in writing and duly executed by the parties.
- 17.07 If any provision of this Agreement or the application to any person or circumstances is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be enforceable to the extent permitted by law.

The parties hereby execute this Agreement as of the date first written above.

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**, by the
Deputy Minister of Education

Rob Wood

Independent School Authority
Per:

Authorized signatory

