

AGREEMENT

FOR SERVICES OF INDEPENDENT CONTRACTOR

BC _____

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter County) and **Relias Learning LLC**, with an address at 111 Corning Road, Ste. 250 Cary, North Carolina (hereafter Contractor) wherein Contractor agrees to provide and County agrees to accept the services specified herein.

WHEREAS, Contractor represents that it is specially trained, skilled, experienced, and competent to perform the special services required by County and County desires to continue to retain the services of Contractor pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVE

Director at phone number 805-681-5220 is the representative of County and will administer this Agreement for and on behalf of County. Mark Belles, COO at telephone number 877-200-0020 is the authorized representative for Contractor. Changes in designated representatives shall be made only after advance written notice to the other party.

2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To County: Director
 Santa Barbara County
 Department of Behavioral Wellness
 300 N. San Antonio Road
 Santa Barbara, CA 93110
 FAX: 805-681-5262

To Contractor: Mark Belles, COO
 Relias Learning LLC
 111 Corning Road, Suite 250
 Cary, North Carolina 27518

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

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3. SCOPE OF SERVICES

Contractor agrees to provide services to County in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. TERM

Contractor shall commence performance on May 15, 2016 and end performance upon completion, but no later than February 28, 2018 unless otherwise directed by County or unless earlier terminated.

5. COMPENSATION OF CONTRACTOR

In full consideration for Contractor's services, Contractor shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference.

6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that Contractor (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent Contractor as to County and not as an officer, agent, servant, employee, joint venturer, partner, or associate of County. Furthermore, County shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its work and function. However, County shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions hereof. Contractor understands and acknowledges that it shall not be entitled to any of the benefits of a County employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. Contractor shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Contractor shall be solely responsible and save County harmless from all matters relating to payment of Contractor's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to the County or to this Agreement.

7. STANDARD OF PERFORMANCE

Contractor represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Contractor shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which Contractor is engaged. All products of whatsoever nature, which Contractor delivers to County pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in Contractor's profession. Contractor shall correct or revise any errors or omissions, at County's request without additional compensation. Permits and/or licenses shall be obtained and maintained by Contractor without additional compensation.

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8. DEBARMENT AND SUSPENSION

Contractor certifies, to the best of its knowledge, to County that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. Contractor certifies that, to the best of Contractor's knowledge, it shall not contract with a subcontractor that is so debarred or suspended.

9. TAXES

Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. County shall not be responsible for paying any taxes on Contractor's behalf, and should County be required to do so by state, federal, or local taxing agencies, Contractor agrees to promptly reimburse County for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. CONFLICT OF INTEREST

Contractor covenants, to the best of its knowledge, that Contractor presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants, to the best of its knowledge, that in the performance of this Agreement, no person having any such interest shall be employed by Contractor. Contractor must promptly disclose to the County, in writing, any potential conflict of interest. County retains the right to waive a conflict of interest disclosed by Contractor if County determines it to be immaterial, and such waiver is only effective if provided by County to Contractor in writing.

11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

- A. County Data: All information provided by County shall remain the property of County. Contractor will return the data at the end of the Agreement.
- B. Contractor is granted a license to use the County data materials (as defined in Exhibit A), in accordance with the terms of Exhibit A, for the purposes of this Agreement.
- C. County use of an eCommerce site provided by Contractor ("County's Site"): County is granted a nontransferable license to use the County Site provided by Contractor as described in this Agreement for the purpose intended, including the use of the Contractor's Trademark (if such Trademark is provided by Contractor on the County's Site), County Site web address, and proprietary information related to the County Site for the purpose described in this Agreement.

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- D. Contractor shall remain the sole and exclusive owner of all features and functionality of the Contractor's service and all technology used to provide them and all intellectual property contained therein, including modifications and derivative works, regardless of whether created at the request of County.
- E. Contractor warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any U.S. intellectual property or U.S. proprietary rights of any third party.
- F. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

12. NO PUBLICITY OR ENDORSEMENT

Contractor shall not use County's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Contractor shall not use County's name or logo in any manner that would give the appearance that the County is endorsing Contractor. Neither party shall in any way contract on behalf of or in the name of the other party. Contractor shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the County or its projects, without obtaining the prior written approval of County.

13. PROPERTY AND INFORMATION

All of a party's (owner) property, documents, and information provided for the other party's use in connection with the services shall remain the owner's property, and the other party shall return any such items whenever requested by the owner and whenever required according to the Termination section of this Agreement. The other party may use such items only in connection with the services provided under this Agreement. Subject to applicable public disclosure laws, neither party shall disseminate any of the owner's property, documents, or information without the owner's prior written consent.

14. RECORDS, AUDIT, AND REVIEW

Contractor shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Contractor's profession and shall maintain all records until such time that the State Department of Health Care Services completes all actions associated with the final audit, including appeals, for the fiscal year(s) covered by this Agreement, or not less than four (4) years following the termination of this Agreement, whichever is later. All accounting records shall be kept in accordance with generally accepted accounting principles. County shall have the right to audit and review all such documents and records at any time during Contractor's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), Contractor shall be subject to the examination and audit of the California State Auditor, at the request of the County or as part of any audit of the County, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). Contractor shall participate in any audits and reviews, whether by County or the State, at no charge to County.

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15. INSURANCE

Contractor agrees to the insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

16. NONDISCRIMINATION

County hereby notifies Contractor that County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and Contractor agrees to comply with said ordinance.

17. NONEXCLUSIVE AGREEMENT

Contractor understands that this is not an exclusive Agreement and that County shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Contractor as the County desires.

18. NON-ASSIGNMENT

Neither Party may assign this Agreement and any or all of its rights and obligations herein without the other party's prior written consent, which may not be unreasonably withheld. However, Contractor may assign or transfer this Agreement, and all of its rights and obligations, to a successor in interest or affiliate of Contractor in the event of its merger, consolidation, change in control or similar transaction as a result of the Contractor's corporate restructuring, without County's prior written consent.

19. TERMINATION

- A. County or the Contractor may, by written notice to, terminate this Agreement in whole or in part at any time, whether for County's convenience, for nonappropriation of funds, or because of the failure of Contractor to fulfill the obligations herein.
 1. **For Convenience.** County or Contractor may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, Contractor shall, as directed by County, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on County from such winding down and cessation of services.

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2. For Nonappropriation of Funds.

- A. The parties acknowledge and agree that this Agreement is dependent upon the availability of County, State, and/or federal funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the County, State and/or federal governments for the Agreement, or is not allocated or allotted to County by the County, State and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of County to make payments after the effective date of such non-allocation or non-funding, as provided in the notice, will cease and terminate.
- B. As permitted by applicable State and Federal laws regarding funding sources, if funding to make payments in accordance with the provisions of this Agreement is delayed or is reduced from the County, State, and/or federal governments for the Agreement, or is not allocated or allotted in full to County by the County, State, and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of County to make payments will be delayed or be reduced accordingly or County shall have the right to terminate the Agreement. If such funding is reduced, County in its sole discretion shall determine which aspects of the Agreement shall proceed and which Services shall be performed. In these situations, County will pay Contractor for Services and Deliverables and certain of its costs. Any obligation to pay by County will not extend beyond the end of County's then-current funding period.
- C. Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, County in the event that the necessary funding to pay under the terms of this Agreement is not available, not allocated, not allotted, delayed or reduced.

- 3. **For Cause.** Should either party default in the performance of this Agreement or materially breach any of its provisions, including payment provisions, the non-breaching party may, at its sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, the breaching party shall immediately discontinue all services affected (unless the notice directs otherwise) and notify the non-breaching party as to the status of its performance. The date of termination shall be the date the notice is received by the breaching party, unless the notice directs otherwise.

- B. Upon termination, each party shall deliver to the other party ("owner") all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by the other party in performing this Agreement, whether completed or in process, except such items as owner may, by written permission, permit the other party to retain. Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to County

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such financial information as in the judgment of County is necessary to determine the reasonable value of the services rendered by Contractor. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.

20. SECTION HEADINGS

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

21. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

22. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

23. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

24. NO WAIVER OF DEFAULT

No delay or omission of County to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to County shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of County.

25. ENTIRE AGREEMENT AND AMENDMENT

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

26. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

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27. COMPLIANCE WITH LAW

Contractor shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes applicable to the services provided by Contractor herein now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Contractor in any action or proceeding against Contractor, whether County is a party thereto or not, that Contractor has violated any such ordinance or statute, shall be conclusive of that fact as between Contractor and County.

28. CALIFORNIA LAW AND JURISDICTION

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

29. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

30. AUTHORITY

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

31. SURVIVAL

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

32. PRECEDENCE

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

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THIS AGREEMENT INCLUDES:

1. EXHIBIT A - Statement of Work
2. EXHIBIT B – Financial Provisions
3. EXHIBIT B-1 - Schedule of Rates
4. EXHIBIT C – Insurance Provisions

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Agreement for Services of Independent Contractor between the County of Santa Barbara and Relias Learning, LLC.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on May 15, 2016 executed by County.

COUNTY OF SANTA BARBARA

By: _____
PETER ADAM, CHAIR
BOARD OF SUPERVISORS

Date: _____

CONTRACTOR
RELIAS LEARNING LLC.

By: _____

Date: _____

APPROVED AS TO ACCOUNTING FORM:
THEODORE FALLATI, CPA
AUDITOR-CONTROLLER

By _____
Deputy

APPROVED AS TO INSURANCE FORM:
RAY AROMATORIO
RISK MANAGER

By: _____
Manager

ATTEST:
MONA MIYASATO, COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By: _____
Deputy Clerk

Date: _____

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

By _____
Deputy County Counsel

RECOMMENDED FOR APPROVAL:
ALICE A. GLEGHORN, Ph.D.
DEPARTMENT OF BEHAVIORAL WELLNESS
DIRECTOR

By _____
Director

EXHIBIT A
STATEMENT OF WORK

RELIAS ACADEMY eCommerce Site Agreement

1. **PERFORMANCE.** Relias Learning LLC (Contractor) shall provide an eCommerce site through which Behavioral Wellness staff and its contracted community based organizations can access online courses and trainings created by Behavioral Wellness along with other courses distributed by Relias to obtain Continuing Education Units for compliance purposes. Behavioral Wellness shall receive a share of revenues from Relias for all training activity that occurs through the Behavioral Wellness eCommerce site.

1.1 This Academy eCommerce Site Agreement (the "Statement of Work") is entered into between Relias Learning LLC (Company), and County of Santa Barbara Department of Behavioral Wellness ("Customer"), effective as of May 15, 2016. Company and Customer are collectively referred to hereafter as "the parties" and individually as a "party."

2. **DEFINITIONS.**

Terms not otherwise defined herein will have the following meanings:

2.1 Company Courses shall mean online courses which are built by Company from Company's course content and which are solely owned or licensed by Company and sold on the Customer eCommerce site (excluding Customer Courses).

2.2 Customer eCommerce Site (also referred to as "County Site") shall mean the online e-commerce training site that is a sub-directory of Company's eCommerce Site and that Company will create, maintain, support and host (subject to the limitations in Section 3 of this Agreement) on behalf of Customer.

2.3 Company Intellectual Property shall mean and include the Customer eCommerce Site and Company Courses.

2.4 Customer Courses shall mean courses developed solely by Customer and hosted on the Customer eCommerce site.

3. **SCOPE/TERM.**

3.1 Grant of Rights. During the Term, and subject to the terms and conditions set forth herein, Customer hereby grants to Company a license to i) sell access to the Customer Courses through the Customer eCommerce Site, and ii) sell access to the Customer Courses as part of Company's learning management system subscription agreements ("Subscription Agreements") and on Company's e-commerce site. Customer shall control which courses are made available through the eCommerce site, and may request removal of Customer Courses at any time by providing written notice to Company. Nothing contained in this Agreement shall prevent Customer from continuing to use or present the Customer Courses within its own communities and constituents. Upon termination, the Customer Site shall be deactivated, and all Customer Courses shall be returned to Customer.

EXHIBIT A
STATEMENT OF WORK

- 3.2 Company Responsibilities. Company will be responsible for the initial set-up of the Customer eCommerce Site, including adding customer logo and customer content for initial site branding as Customer eCommerce site. Initial implementation covers training of Customer on how to utilize the available administrative controls and functions for the Customer eCommerce Site including adding customer content, pricing and course packaging in bundles if desired.
- 3.3 Updates. Company will update Customer eCommerce Home Page information with minor HTML updates as necessary, but no more frequently than two (2) times in any twelve (12) month period.
- 3.4 Term. The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect from 5/15/2016 through 2/28/2018, unless otherwise terminated earlier as provided in this Agreement.

4. **FEES AND PAYMENTS.**

- 4.1 Revenue Share. During the Term of this Agreement, Company shall make quarterly payments to Customer in accordance with the attached Exhibit B (Financial Provisions) and B-1 (Schedule of Rates).
- 4.2 Payments and Accounting. Company will maintain or cause to be maintained a complete set of records, statements and accounts concerning the sale of Company Courses on the Customer eCommerce Site. Following the close of each calendar quarter during the Term, Company will pay Customer the Revenue Share for that calendar quarter due and owing to Customer, net sixty (60) days, after the close of that calendar quarter, accompanied by a report evidencing Company's calculation of Revenue Share for that quarter. All books and reports related to the sale of Company Courses on the Customer eCommerce Site will be open and available no more than once per year unless otherwise mutually agreed upon by both parties during regular business hours and upon reasonable request, but no less than ten (10) business days, for inspection by Customer.

5. **REPRESENTATIONS/WARRANTIES.**

- 5.1 Joint Representations and Warranties. Each party represents and warrants to the other party that it is duly organized and validly existing and in good standing under the laws of the state of its organization as set forth above. Each party further represents and warrants that it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder and that this Agreement is a legal and valid obligation binding upon such party and is enforceable in accordance with the terms herein.
- 5.2 Customer's Representations and Warranties. Each party hereby represents and warrants that it is the exclusive owner of all right, title, and interest in its respective Intellectual Property and has full power to enter into this Agreement and make the grants hereof; each party further warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any U.S. intellectual property or U.S. proprietary rights of any third party.

EXHIBIT A

STATEMENT OF WORK

5.3 Disclaimer of Warranties. THE COMPANY INTELLECTUAL PROPERTY IS PROVIDED ON AN 'AS IS AS AVAILABLE' BASIS. COMPANY, ITS CUSTOMERS, DATA CENTER AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES, EXPRESSED OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT THE CUSTOMER ECOMMERCE SITE IS ERROR- FREE, ACCURATE OR RELIABLE OR WILL OPERATE WITHOUT INTERRUPTION OR THAT ALL ERRORS WILL BE CORRECTED OR WILL COMPLY WITH ANY LAW, RULE OR REGULATION, (ii) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND (iii) ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ADVICE, STATEMENT OR INFORMATION GIVEN BY COMPANY, ITS AFFILIATES, CONTRACTORS OR EMPLOYEES SHALL CREATE OR CHANGE ANY WARRANTY PROVIDED HEREIN.

6. PROPRIETARY RIGHTS.

6.1 Intellectual Property Rights. Except for the rights granted to Company herein, all right, title, and interest in and to the Customer Courses is and shall be the property of Customer. Any and all right, title, and interest in and to Company's intellectual property, whether copyrightable, patentable or otherwise, including but not limited to the Customer eCommerce Site, Company Courses, and Company Course Library, is and shall be the sole and exclusive property of Company.

6.2 Infringement. Customer agrees to notify Company promptly of any and all infringements and/or potential infringements of Company Intellectual Property that come to Customer's attention and to give reasonable assistance in preventing and stopping such infringements. Infringements and passing off proceedings will be entirely within the discretion and expense of Company and all damages that may be recovered will be solely for the benefit of Company.

7. CONFIDENTIALITY.

7.1 Confidential Information. Each party acknowledges that it ("Receiving Party") may receive certain information relating to the other party's ("Disclosing Party") business that is confidential and proprietary information and is not generally known to the public ("Confidential Information"). Confidential Information shall include, without limitation, this Agreement, marketing plans and strategies, intellectual property, pricing strategies, marketing materials, membership lists and other information that is identified orally or in writing by the disclosing party to be confidential or that the receiving party should reasonably believe to be confidential information or a trade secret of the disclosing party. All Confidential Information will remain the sole property of the Disclosing Party, and the Receiving Party will have no rights to the Confidential Information, except as otherwise provided in the Agreement.

7.2 Exclusions. Confidential Information shall not include information which the Receiving Party can reasonably demonstrate: (i) was or becomes generally available to the public through no breach of the Agreement; (ii) was previously known by the Receiving Party without any obligation to hold it in confidence; (iii) was received from a third party

EXHIBIT A

STATEMENT OF WORK

free to disclose such information without restriction; (iv) was independently developed by the Receiving Party without the use of the Disclosing Party's Confidential Information as documented by contemporaneous documents; (v) was approved for release by written authorization of the Disclosing Party, but only to the extent of such authorization; (vi) is required by law or regulation to be disclosed but only to the extent and for the purposes of such required disclosure; or (vii) is disclosed in response to a valid order of a court or other governmental body but only to the extent of and for the purposes of such order; provided that the Receiving Party will use reasonable efforts to first notify the Disclosing Party of the order to permit the Disclosing Party to seek an appropriate protective order.

7.3 Treatment of Confidential Information. Each party agrees to treat all Confidential Information of the other party in the same manner as it treats its own Confidential Information but in no case will the degree of care used by the Receiving Party be less than reasonable care. The Receiving Party acknowledges the economic value of the Disclosing Party's Confidential Information. The Receiving Party will: (a) use the Confidential Information only in connection with the performance of its obligations or exercise of its rights under this Agreement; (b) restrict disclosure of the Confidential Information to its employees, agents and subcontractors with a "need to know"; and (c) not disclose the Disclosing Party's Confidential Information to any other person or entity without prior written consent of the disclosing party.

7.4 Duty Upon Termination. Upon the expiration or termination of the Agreement for any reason and upon request, each party will immediately either return to the Disclosing Party all originals and copies thereof of any Confidential Information or will deliver to the Disclosing Party a certificate certifying that all such Confidential Information has been destroyed.

8. LIMITATION ON LIABILITY.

8.1 Limitation of Liability. Neither party shall be liable for any indirect, consequential, incidental, special, punitive or exemplary damages, whether in contract, tort (including negligence, and strict liability) or any other legal or equitable principles, or for any loss of profits or revenue, regardless of whether such party knew or should have known of the possibility of such damages.

9. SURVIVAL.

9.1 Survival. Upon the expiration or termination of this Agreement for any reason, the rights and obligations of the parties under this Agreement will terminate immediately; provided that the applicable portions of Section 3 (Scope/Term) and Sections 4 (Fees and Payments), 5 (Representations/Warranties), 6 (Proprietary Rights), 7 (Confidentiality), 8 (Limitation on Liability), and 9 (Survival) will survive such termination pursuant to their respective terms as will any cause of action or claim of either party, whether in law or at equity, accrued or to accrue because of any breach or default.

EXHIBIT A
STATEMENT OF WORK

10. **GENERAL TERMS.**

- 10.1 Waiver. No delay or omission by either party to exercise any right or power under this Agreement will impair such right or power or be construed to be a waiver thereof. A waiver by either party of any obligation to be performed by the other party under this Agreement or any breach thereof will not be construed to be a waiver of any succeeding breach thereof or of any other obligation to be performed by the other party under this Agreement.
- 10.2 Force Majeure. Excluding payment obligations, each party to this Agreement will be excused from performance under this Agreement for any period to the extent that it is prevented from performing any action pursuant to this Agreement, in whole or in part, as a result of delays beyond its reasonable control caused by the other party or by an act of God, war, civil disturbance, court order, labor dispute, or other cause beyond its reasonable control, including failures or fluctuations in power, heat, light, air conditioning or telecommunications equipment.
- 10.3 Third Parties. Except as explicitly set forth in this Agreement, none of the provisions of this Agreement will be for the benefit of or enforceable by any third party.

EXHIBIT B

FINANCIAL PROVISIONS

Periodic Compensation (with attached Schedule of Rates)

1. Contract Maximum Value. For services to be rendered under this contract, Contractor shall be paid a one-time implementation fee of \$1,500 for Fiscal Year 15-16, and a yearly annual subscription fee of \$500 per year over a 12 month period for a total maximum Contract amount not to exceed \$2,500 for the Term May 15, 2016 through February 28, 2018.
2. Payment for Services. Payment for services and/or reimbursement of costs shall be made upon Contractor's satisfactory performance, based upon the scope and methodology contained in EXHIBIT A. Payment for services shall be based upon the rates as set forth in EXHIBIT B-1. Invoices submitted for payment that are based upon EXHIBIT B-1 must contain sufficient detail and provide supporting documentation to enable an audit of the charges.
3. Proper Invoice. Contractor shall submit to County's Designated Representative an invoice or certified claim on the County treasury for the service performed over the period specified. County's representative shall evaluate the quality of the service performed, and if found to be satisfactory, shall initiate payment processing.

A. The invoice must show the Board Contract number, the services performed or detailed statement of purchases with receipts, the rate and authorization form, if applicable.

B. County's Designated Representative:

1. Payments, send to:

Santa Barbara County
Department of Behavioral Wellness
Attn: Accounts Payable
429 North San Antonio Road
Santa Barbara, CA 93110
admhs_accounts_payable@co.santa-barbara.ca.us

2. Revenue, send to:

Santa Barbara County
Department of Behavioral Wellness
Attn: Accounts Receivable
429 North San Antonio Road
Santa Barbara, CA 93110

EXHIBIT B

FINANCIAL PROVISIONS

4. Correction of Work. County's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of County's right to require Contractor to correct such work or billings or seek any other legal remedy.
5. Fees and payments.
 - A. Revenue Share. During the Term of this Agreement, Company shall make quarterly payments to Customer in accordance with the attached Exhibit B-1 (Schedule of Rates).
 - B. Payments and Accounting. Company will maintain or cause to be maintained a complete set of records, statements and accounts concerning the sale of Company Courses on the Customer eCommerce Site. Following the close of each calendar quarter during the Term, Company will pay Customer the Revenue Share for that calendar quarter due and owing to Customer, net sixty (60) days, after the close of that calendar quarter, accompanied by a report evidencing Company's calculation of Revenue Share for that quarter. All books and reports related to the sale of Company Courses on the Customer eCommerce Site will be open and available no more than once per year unless otherwise agreed to during regular business hours and upon reasonable request, but no less than ten (10) business days, for inspection by Customer.

EXHIBIT B1

SCHEDULE OF RATES

Multi-year: May 15, 2016 through February 28, 2018

<u>Type of Service</u>	<u>Subscription Type</u>	<u>Cost</u>	<u>Total Maximum Contract Value</u>
Customer eCommerce Academy Portal	License, Yearly Annual Subscription	\$500 per 12 months, FY 15-16, 16-17, 17-18	\$1,000*
Professional Services	Statement of Work	\$1,500 One time Implementation fee, FY 15-16	\$1,500
Maximum Annual Contract Amount Not to Exceed: (*Contingent on the Board of Supervisors Annual Budget Approval)			\$2,500

eCommerce Site Academy - Revenue Share
FY 2015-2018

<u>Share</u>	<u>Location</u>	<u>Course</u>	<u>Customer % of Revenue</u>
Affiliate Share	Department of Behavioral Wellness eCommerce Site	Any Course	10% of Collected Revenue*
Royalty Share	Department of Behavioral Wellness eCommerce Site	Behavioral Wellness Course	70% of Net Collected Revenue** for Behavioral Wellness Courses

Estimated Total Revenue Potential: *Contingent on Department Staff usage

*Collected Revenue is defined herein as amount actually collected by Relias from the sale of either Company or Customer courses as described above, less any discounts, chargebacks, transaction fees, third party license fees, Sponsorship Fees, or credits, payable quarterly.

**Net Collected Revenue is defined herein as Collected Revenue less any Affiliate Share.

EXHIBIT C

INSURANCE REQUIREMENTS

(For this Contract only - Professional Contracts)

INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as if applicable:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability** (Errors and Omissions) Insurance appropriate to the CONTRACTOR'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
2. **Notice of Cancellation** – CONTRACTOR shall not cancel the policy without written notice to the COUNTY.
3. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".

EXHIBIT C

INSURANCE REQUIREMENTS

(For this Contract only - Professional Contracts)

4. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
5. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement.
6. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.