

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT Agreement and Release (“Agreement” or “Settlement”) is entered into by and between West Valley-Mission Community College District (“District”) and [REDACTED] and [REDACTED] (“Students”). The District and Students are hereafter referred to as the “Parties.”

RECITALS

Whereas, Students alleged in a letter dated May 16, 2018 (“Letter”) that the District violated the Americans with Disabilities Act (ADA), 42 U.S.C. § 12181, *et seq.*, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and related California statutes by offering online course content that allegedly did not fully comply with Cal Gov. Code §§ 7405(a) and 11135;

Whereas, after considering the expense and uncertainty associated with litigation, the Parties desire to fully, fairly, and finally settle all claims Students have or may have against the District for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and that desire manifests itself by concluding all pending and/or threatened litigation between the Parties related to the Letter; and

Whereas, the Parties now desire to resolve their differences and disputes between them related to the Letter in consideration of the following terms set forth in this Agreement.

NOW, THEREFORE, in exchange for the mutual covenants and promises contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Definitions

The following terms shall have the following meanings with respect to this Agreement. All other terms shall be interpreted according to their plain and ordinary meaning.

1. “Accessible” refers to Electronic Information Technology that complies with the accessibility requirements of the technical regulations, 36 C.F.R. pt. 1194, which implement Section 508 of the Rehabilitation Act, 29 U.S.C. § 794d. For the avoidance of doubt, EIT that substantially satisfies the success criteria of the Web Content Accessibility Guidelines (WCAG) 2.0, Level AA, shall be deemed “Accessible” for purposes of this Agreement, so long as blind persons using Screen Access Software to engage with that content can independently access the same information and perform the same functions as non-blind persons with substantially similar ease.
2. “Screen Access Software” means software that renders textual and graphical information into Braille or audible speech so that blind persons can independently interact with the

Internet and software programs, access information, and engage in transactions using nonvisual means.

3. “District” refers to the West Valley-Mission Community College District, its directors, officers, and employees.
4. “Effective Date” refers to the date by which this Agreement is fully executed by all Parties.
5. “Plugin Content” refers to electronic content delivered to the District for presentation to users through Third-Party LMS.
6. “Third Party LMS” means a commercially available software application or cloud based system offered by persons other than District for the tracking, reporting and delivery of educational courses. By way of example only, Third Party LMS includes, without limitation, Schoology, Blackboard, and Canvas LMS.
7. “E202 General Exceptions” refers to the General Exceptions to Section 508 of the Rehabilitation Act of 1973 codified at 36 C.F.R. 1194 App. A.E202 (2018) and available at <https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-rule/text-of-the-standards-and-guidelines#E202-general-exceptions>.
8. “Electronic Information Technology” or “EIT” refers to any software, websites, mobile apps, e-learning platforms, e-books, course management tools or other electronic content, including Plugin Content, as it is distributed to students through a personal computer, mobile device, or stand-alone hardware.
9. “Aira Service” refers to the reading and sight-assistant services offered through mobile applications by the Aira Tech Corporation and described on the Aira website at <http://aira.io>.
10. “Students’ Counsel” refers to TRE Legal Practice.

B. Alterations to District Policies

1. Within 10 months of the Effective Date, the District shall revise and modify its procurement Board Policies and Procedures to: (1) require that all purchased or licensed EIT required to be used by students is Accessible, including all components in libraries of Plugin Content; (2) include standard language in every procurement contract that requires vendors to demonstrate that EIT is Accessible by producing non-automated user testing results before the District will accept delivery; (3) require that vendors designate a contact person for expediting any complaints applicable to California Government Code § 11135; and (4) include an express vendor warranty that all procured or licensed EIT is

Accessible as a material term of all EIT procurement contracts. Upon discovering that any EIT purchased or licensed by the District is not Accessible and does not fall within any of the E202 General Exceptions, including individual components of Plugin Content libraries, the District shall suspend across all campuses the required use of any component of the EIT that is not Accessible until such affected component of the EIT is determined and documented by the District to be Accessible. Such a suspension shall be immediate where use of the EIT in a particular course or program affects a student with a disability, unless the affected student agrees otherwise, and shall take effect at the end of the current semester in all other use cases. The language described in the bullet point directly below provides a guideline of an acceptable contractual example as an outcome of this provision in Section B, Subsection 1 of this Agreement:

- **Accessibility and Electronic and Information Technologies.** Contractor hereby warrants that any goods or services, including any hardware or software products or services, to be provided under the Agreement comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention and will designate a contact person for expediting any complaints applicable to California Government Code §11135. Contractor further agrees to indemnify, defend, and hold harmless the District, the Chancellor's Office of the California Community Colleges, and any California community college using the Contractor's products or services from any claim arising out of its failure to comply with these requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of the Agreement. Contractor and any of their Subcontractors shall provide credible, third-party verification demonstrating compliance of product accessibility per current requirements of the revised US Section 508 Standards or Web Content Accessibility Guidelines 2.0, Level AA (WCAG 2.0, AA) upon initial deployment and with each major subsequent release prior to production use by faculty, staff, or students. Appropriate documentation detailing the testing, including evaluation results, will be current and maintained.
2. Within 10 months of the Effective Date, the District shall: (1) require all course instructors to report to the District all EIT required for use in any of their courses; (2) train all course instructors regarding the requirements of the preceding paragraph; and (3) prohibit the use of any component of an EIT not conforming to the procurement requirements of the preceding paragraph. Subsequently, the District shall notify all instructors semi-annually regarding the requirements of the preceding paragraph and the

prohibition of use of EIT components not conforming to the procurement requirements of the preceding paragraph.

C. Condition Precedent

As a condition precedent, this Agreement will become effective upon approval by the District's Board of Trustees.

D. Term of the Agreement

The term of this Agreement shall be two years from the Effective Date.

E. Enforcement of Agreement

1. All disputes concerning compliance with this Agreement shall be resolved according to the process described in the following three paragraphs.
2. Counsel for a Party shall notify counsel for the other Parties in writing of any perceived non-compliance with the terms of this Agreement, or any other perceived dispute related to the terms, processes, or obligations set forth in this Agreement.
3. Unless otherwise agreed to by the Parties, with respect to any particular dispute, the Parties agree to meet and confer in good faith within fifteen (15) business days after receipt of a written notification of a dispute pursuant to the previous paragraph.
4. In the event that the parties are unable to resolve their dispute after 21 days of meet and confer negotiations, any party may submit the dispute to a court of competent jurisdiction in San Jose for resolution. Reasonable fees and costs in connection with any such proceeding may be claimed and recovered by either party in accordance with applicable law.

F. Payments and Fees

1. Within 90 days after the Effective Date, the District shall make a payment of \$4,000 to [REDACTED], c/o TRE Legal Practice.
2. Within 90 days after the Effective Date, the District shall make a payment of \$4,000 to [REDACTED], c/o TRE Legal Practice.
3. Within 90 days of the Effective Date, the District shall make a payment of \$42,500.00 to TRE Legal Practice for the portion of Students' Attorneys' Fees and Cost that the District negotiated, exclusive of any portion of Students' Attorneys' fees and costs negotiated by third parties.
4. The District shall mail the above payments to TRE Legal Practice, 4226 Castanos Street, Fremont, CA 94536.

5. From the Effective Date of this Agreement, the District shall provide 18 months of Aira service with 500 minutes of service per month for [REDACTED].
6. From the Effective Date of this Agreement, the District shall provide 18 months of Aira service with 500 minutes of service per month for [REDACTED].

G. Release

1. Effective on the Effective Date of this Agreement, Students and their executors, successors, heirs, assigns, administrators, agents, and representatives, in consideration of the relief set forth herein, fully and finally release the District and each of its respective present, former, or future officers, directors, and employees (collectively, "District's Released Parties") from any and all claims, rights, demands, charges, complaints, actions, suits, and causes of action, currently known or unknown, foreseeable or unforeseeable, alleged, or which could have been alleged, in the Letter or in any court or administrative proceeding relating to the subject matter of the Letter that arose on or before the Effective Date.
2. Students expressly waive the rights provided under California Civil Code Section 1542, relating to the subject matter of the Letter as to the District and the District's Released Parties, which states: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IS KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.
3. Students understand the significance and consequences of a California Civil Code Section 1542 waiver, and they expressly and knowingly assume full responsibility for, and risk of, any damages or losses caused by this waiver. Students consulted with independent counsel, or had and declined the opportunity to do so, and executed this Agreement with a complete understanding of its legal effect. Students understand that by executing this Agreement, they expressly waive all of the aforementioned rights, and bind themselves to the terms of this Agreement.

H. Miscellaneous

1. This Agreement contains the entire agreement between the Parties. The terms of this Agreement supersede any prior discussions, understandings, or agreements between the Parties relating to this matter. No modifications or limits will be binding on the Parties unless expressly provided for in this Agreement or made by writing signed by all of the Parties.

2. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which, when taken together, will constitute one and the same instrument.
3. This Agreement is deemed to have been drafted by all Parties hereto, as a result of arm's length negotiations among the Parties. Whereas all Parties have contributed to the preparation of this Agreement, it shall not be construed more strictly against one party than another. The headings in this Agreement are solely for convenience and will not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural.
4. This Agreement shall be governed, construed, and interpreted in accordance with the laws of California.
5. In the event any portion of this Agreement is deemed to be unenforceable, or is in conflict with applicable law, the remainder of this Agreement will be enforced and will remain in full force and effect. Nothing in this Agreement shall be construed to require the District to act contrary to state or federal laws, regulations, or guidelines.
6. The Parties, having carefully read this Agreement, and having consulted or having been given an opportunity to consult legal counsel, hereby acknowledge their agreement to all of the foregoing terms and conditions by executing this Agreement. Each signatory hereto represents and warrants that it is authorized to sign this Agreement on behalf of the respective party. This Agreement may be executed in any number of counterparts, and each such counterpart shall be an original and together they shall constitute one agreement. Facsimile and PDF signatures on this Agreement shall be treated as original signatures. A copy of this Agreement shall be treated as an original.

For West Valley-Mission Community College District:

By:

DATE

Name and Title

For [REDACTED]:

[REDACTED]

By:

DATE

For [REDACTED]:

[REDACTED]

By:

DATE

For TRE Legal Practice:

[REDACTED]

By:

DATE

Name and Title

[REDACTED]