

AMERICA LEARNS

License Agreement

This contract to license the America Learns Impact Suite (this “License” or “License Agreement”) is made as of _____ (the “Effective Date”) between America Learns, LLC (“America Learns”) and the County of Ventura, which includes among its component parts, the Ventura County Library (“Client”).

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- PART 1: DEFINITIONS

Client Reporter: Any Client volunteer or staff member serving as a tutor or teacher.

Client Staff: Any employee or contractor of Client's.

Client Student: Any individual receiving tutoring services provided by Client.

- PART 2: GRANT OF LICENSE

A. License Grant

America Learns grants Client a non-exclusive, non-transferable, worldwide license to use the web-based America Learns Impact Suite (the "Impact Suite"), solely for the use of Client's own internal business purposes in managing the provision of tutoring services and subject to the terms and conditions of this License.

All rights not expressly granted to Client in this License are reserved by America Learns.

B. License Not a Sale

This License is not a sale and does not convey to Client any rights of ownership in or related to any aspect of the Impact Suite or any of the America Learns Intellectual Property Rights owned by America Learns or its owners.

Client acknowledges that the Impact Suite is not intended for storage of any data of any type or format beyond the term of this License.

C. Term

Initial Term of License

Subject to earlier termination as hereinafter provided, the term of this License shall be for an initial term commencing on the Effective Date (which is defined as the date that Client is first provided any access to the Impact Suite) continuing for one-time setup, implementation consulting and Client Staff training for a maximum period of six months, and continuing for 365 days from the "Start Date." The "Start Date" is defined as the date when six months of set-up, implementation consulting and Client Staff training on the Impact Suite has been provided, or the date that the first Client Reporter begins to use the Impact Suite to provide tutoring services to a Client Student, whichever date is earlier.

Renewals of License

Subject to the payment of fees required under Part 6 of this License Agreement, this License shall automatically renew for a period of twelve (12) months on each anniversary of the Start Date ("Renewal Term"), unless either party provides written notice to the other party on or prior to the expiration of the then-existing term of its decision not to renew. The period of time from the Effective

Date through the termination of this License pursuant to its terms is herein referred to as the "License Period."

D. Client Restrictions

Client shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit any aspect of America Learns' services or the Impact Suite in any way; (ii) make available to any third party any aspect of America Learns' services or the Impact Suite in any way (other than content in the Impact Suite which has been added by Client Reporters or Client Staff); (iii) modify or make derivative works based upon any aspect of America Learns' services or the Impact Suite (other than content in the Impact Suite which has been added by Client Reporters or Client Staff); (iv) "frame" or "mirror" any content of the Impact Suite on any other server or Internet-connected device; or (v) reverse engineer or access any aspect of the Impact Suite in order to (a) build, establish, contribute to or populate a competitive product or service, (b) build a product using similar ideas, features, or functions, or (c) copy any ideas, features, or functions of any aspect of America Learns' services or the Impact Suite.

E. Intellectual Property Ownership and Rights

America Learns-owned Intellectual Property

America Learns (and its licensors, where applicable) alone shall own all right, title and interest, including all related intellectual property rights, in and to (i) the Impact Suite and its content, (ii) the methodology, technology, and services related to the Impact Suite, (iii) any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by any party other than Client or any Client Staff with respect to such items. America Learns, along with Client, shall also own all right, title and interest, including all related intellectual property rights, in and to Client's, Client Staff's and Client Reporters' tutoring strategies (together, the "America Learns Intellectual Property Rights"). America Learns will not share any Client specific report data without Client's express permission, except in the form of Client Submitted Strategies and combined data which has been compiled with data from other clients of America Learns.

Intellectual Property licensed to Client

America Learns grants to Client a perpetual, royalty-free, worldwide, irrevocable, nonexclusive license in and to Client's, Client Staff's and Client Reporters' strategies ("Client Submitted Strategies") and Client Reporter Report questions and resulting data ("Client Report Data") for use in compliance with the "Client Restrictions" paragraph above).

F. Limitation on License

Nothing in this License shall be interpreted to prohibit or interfere with Client's ability to independently create, post, populate and use databases or world-wide-web based reports on its own or on any other web site with respect to (i) subject matters unrelated to this License, or (ii) subject matters related to this License but which do not otherwise involve any breach of terms of this License (in particular, the "Client Restrictions" paragraph above).

- PART 3: THE IMPACT SUITE'S FEATURES & TWO LEARNING COMMUNITIES

A. Features

At minimum, Client will have access to the features of the Impact Suite listed in the table below. America Learns will inform Client at least six months in advance of the end of any Renewal Term if features will no longer be included in the Impact Suite package being licensed.

Client acknowledges that it has evaluated each of the features listed below and understands what is and is not included in them.

Reporting	<ul style="list-style-type: none">• Build an unlimited number of reports for Client Reporters to record data and reflections.• View compiled reporting data on-screen or in Excel• Send scheduled e-mail and text message report-completion reminders to volunteers• Maintain an audit trail of changes made to reporting data after each report is first submitted.
Learning Communities	<ul style="list-style-type: none">• Collect lesson plans and strategies from volunteers and make them available to current and future volunteers in the Client Learning Community (described in depth in the next section).• Access all adult literacy strategies in the America Learns National Learning Community(described in depth in the next section).
Client Reporter and Client Student Management	<ul style="list-style-type: none">• Build custom dashboards to manage Client Reporters and Client Students• Import and update records manually or via Excel files• Export data via Excel
Client Accounts & Permissions	<ul style="list-style-type: none">• Create an unlimited number of Client accounts• Use permissions to ensure that designated Client account holders only access the data they need to see, input, and/or edit.
Communications	<ul style="list-style-type: none">• Send e-mails and text messages to Client Staff and Client Reporters

B. The Impact Suite's Two Learning Communities

The Impact Suite houses two separate learning communities – searchable databases of

tutoring resources. Under the terms of this License, Client will be granted access to these two learning communities: the "Client Learning Community" and the "National Learning Community."

The Client Learning Community is made up of resources that are submitted by Client Reporters and Client Staff ("Client Submitted Strategies"). Client will determine which Client Submitted Strategies will be posted to the Client Learning Community. Each posted Client Submitted Strategy will be available to each Client Reporter.

The National Learning Community is made up of resources that have been obtained from multiple sources, including Client, other clients of America Learns, and America Learns itself, which, at each client's own discretion, is visible to all clients of America Learns.

- PART 4: RESPONSIBILITIES AND ACTIONS REGARDING LICENSE

A. Client Submitted Strategies and Client Learning Community Management Responsibilities

Client is solely responsible for determining which Client Submitted Strategies are included in the Client Learning Community. Once a certain Client Submitted Strategy is added to the Client Learning Community, so long as it has not been elevated to the National Learning Community by America Learns, Client has full authority to further edit, supplement, amend or remove that Client Submitted Strategy from the Client Learning Community.

While managing the Client Learning Community, Client may add new categories or topics to the Impact Suite by which to categorize its strategies (e.g., Spelling, Phonics, Fluency). If subsequently America Learns deems that any new topic added by Client is identical or substantially similar to a pre-existing topic, America Learns will have authority to reassign any strategies created under such topic to the pre-existing topic and remove such newly added topic from the Impact Suite. America Learns will inform Client in advance of any decision to take such action.

The Impact Suite shall be used by Client and the Client Reporters only in a noncommercial manner. Client shall not post any Client Submitted Strategy to the Client Learning Community containing content that is libelous, defamatory, obscene, pornographic, threatening, invasive of privacy or publicity rights, abusive, illegal, or otherwise objectionable that would constitute or encourage a criminal offense, violate the rights of any third party, or that would give rise to liability or violate any law. Client shall not post or otherwise distribute any Client Submitted Strategy or other material to the Client Learning Community that contains any solicitation of funds, promotion, advertising, or solicitation for goods or services.

If America Learns considers any Client Submitted Strategy in the Client Learning Community to be inappropriate for use, America Learns will inform Client of its concerns, identifying the Client Submitted Strategy and all concerns or objections. Upon receipt of such notification, Client will review the Client Submitted Strategy and will decide whether it should edit or remove the Client Submitted Strategy from the Client Learning Community. The decision to add, edit or remove any such Client Submitted Strategy shall be made by Client in its sole discretion.

B. Elevation of Strategies from the Client Learning Community to the National Learning Community

Each Client Submitted Strategy that is posted to the Client Learning Community will be the subject of a screening process by America Learns to determine its applicability for the National Learning Community. If America Learns makes, in its sole discretion, the decision that a particular Client Submitted Strategy in the Client Learning Community is applicable to America Learns' other clients, it will elevate the strategy, with attribution to Client, to the National Learning Community. At the time of elevation, the Client Submitted Strategy may be edited, amended, or supplemented by America Learns. Once a Client Submitted Strategy has been elevated from the Client Learning Community to the National Learning Community, its administration is conducted solely by America Learns.

C. National Learning Community Management Responsibilities

America Learns will manage and be responsible for the National Learning Community. America Learns is wholly responsible for determining which strategies are posted to the National Learning Community and has full authority to edit, supplement, amend or delete any such strategy. If Client deems any strategies in the National Learning Community to be inappropriate for its Client Reporters' use, Client must immediately inform America Learns of its concerns in writing, identifying the strategy and Client's concerns or objections. Upon receipt of such notification, America Learns will review the strategy and will decide whether it should edit or remove the strategy of concern from the National Learning Community during this License Period. The decision to add, edit or remove any such strategy shall be made by America Learns in its sole discretion.

D. Evaluation

Prior to the time that Client Reporters begin to use the Impact Suite, America Learns recommends that Client create a series of benchmarks by which to judge the success of Client's use of the America Learns Impact Suite. America Learns may conduct up to 10 interviews with Client Reporters and Client Staff during the License Period to help determine how America Learns can better serve Client. Client will help America Learns recruit Client Reporters to participate in these surveys or interviews.

E. Other Client Responsibilities

Client is responsible for all activity by Client Reporters and Client Staff using any portion of the Impact Suite described in this License and shall abide by all applicable local, state, and federal laws in connection with its use of the Impact Suite.

Client shall (i) notify America Learns immediately of any unauthorized use of any Impact Suite password or account or any other known or suspected breach of security, (ii) not impersonate another user of the Impact Suite or provide false identity information to gain access to or use the Impact Suite, and (iii) not allow any person other than the applicable Client Reporter to access the Impact Suite using such Client Reporter's account details.

- PART 5: TRAINING AND CUSTOMER SUPPORT

A. Training

Client Staff Training

America Learns representatives will spend any number of hours working with Client Staff to train Client Staff to effectively use the Impact Suite (usually eight to ten hours, but more if needed). America Learns will work with Client Staff to create a detailed implementation, ongoing management, and culture integration plan for Client's use of the Impact Suite. America Learns representatives will then spend any additional time that's needed to help Client Staff implement that plan. America Learns will also provide Client Staff with access to a suite of online articles and training videos.

Client Reporter Training

America Learns will provide Client with materials to use when Client performs training workshops for Client Reporters covering how to use the Impact Suite. America Learns will also provide Client with access to a suite of online training videos that its Client Reporters may view.

B. Ongoing Support and Questions

Client Staff

Client Staff may e-mail and telephone America Learns for an unlimited amount of additional support regarding the Impact Suite. America Learns staff will be available to support Client Staff by telephone and e-mail Monday through Friday (other than Californian and United States public holidays).

Client Reporters

Client Reporters may not e-mail or call America Learns staff for direct support. Client Staff and America Learns shall instruct Client Reporters to communicate all direct support inquiries to Client Staff. Client Staff may then contact America Learns with questions or issues if they are unable to help the Client Reporter.

C. Correcting Technological Problems in the Application

America Learns will take all reasonable steps to correct any technological problem within twenty-four (24) hours of learning of the problem. Client agrees to assist America Learns in any reasonable way requested by America Learns in an effort to correct such technological problems.

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- PART 6: PAYMENTS AND FEES

A. Payments

Client agrees to pay America Learns as follows:

During the initial term of this License Agreement, for up to 100 active Client Reporters, Client shall pay America Learns \$7,500 within 90 days of the Effective Date. Client's payment due date for each Renewal Term will be 30 days from the commencement date of the Renewal Term, and the amount Client shall pay America Learns for each Renewal Term will be \$6,500 for the Annual Impact Suite for Up to 100 Active Client Reporters. America Learns will provide Client with at least 90 days' notice of any proposed price increases.

If at any time during the initial term or subsequent terms of this License Agreement, Client has more than 100 Active Client Reporters, Client shall pay America Learns an additional fee of \$52.50 annually for each Active Client Reporter in excess of 100 Client Reporters.

Description of Impact Suite	Amount Payable
One-time setup, implementation consulting, and training materials production fee	\$1,000
Annual Impact Suite for Up to 100 Active Client Reporters (Special Rate for California Library Literacy Programs)	\$6,500
Total for the Initial Term:	\$7,500

B. Payment Terms & Conditions

America Learns offers Client a ninety (90) day, 100% money-back-guarantee starting on the Effective Date. During the 90-day guarantee period, Client may stop using the Impact Suite for any reason, and, should that occur, America Learns will then return any and all funds paid and cancel any outstanding invoices. Client will also be able to download all data Client has stored in the Impact Suite.

After the 90-day money-back-guarantee period expires, Client shall not be entitled to any refund of monies paid.

- PART 7: MISCELLANEOUS

A. Privacy

America Learns will not sell or rent personal information about Client Staff or Client Reporters to third parties and will not use any such personal information for activities not associated with the Impact Suite and the services described in this License. America Learns will take reasonable steps to ensure that any related information in the Impact Suite is protected by password.

B. Internet Connection; Third Party Sites

The Impact Suite may be subject to limitations, delays, and other problems inherent in the use of the electronic databases, the Internet, and electronic communications generally. America Learns is not responsible for any such delays, delivery failures, or other damage resulting from such problems (including direct, indirect and consequential damages). Client understands that because the Impact Suite is a hosted, online application, the Impact Suite may occasionally be unavailable for maintenance or troubleshooting. America Learns does not warrant that the Impact Suite, or the server that makes it available, are free of viruses or other harmful components (although America Learns takes all reasonable steps to avoid such problems). Client understands that it is responsible for all matters regarding the Internet connection used to access the Impact Suite and the protection and integrity of the computers, networks and systems being used.

The Impact Suite may contain links to other websites operated by parties unaffiliated with America Learns. These links allow the user to leave the Impact Suite to visit websites not under the control of America Learns. America Learns expressly disclaims any responsibility for the accuracy, content, or availability of information found on such sites. The inclusion of any link on the Impact Suite does not imply endorsement by America Learns of the linked site.

C. Representations & Warranties

Each of America Learns and Client represents and warrants that it has the legal power and authority to execute, deliver and perform each of its obligations specified in this License, and that such execution, delivery and performance does not violate any obligations or other agreements of such party. America Learns represents and warrants that it will provide the Impact Suite described above in a manner consistent with general industry standards reasonably applicable to the provision of world wide web accessible database services and that the Impact Suite will perform substantially in accordance with the description in this License. Client represents and warrants that it will perform its obligations as described in this License and otherwise agreed with America Learns.

Client represents and warrants that any Client Submitted Strategy posted to the Client Learning Community is entirely original to Client and is not owned or subject to any intellectual property rights owned by any other party (other than America Learns, as specified above).

D. No Liability

The Impact Suite is an information gathering and distribution network. Client understands and agrees that the decision to use any strategy contained anywhere in the Impact Suite is at the sole discretion of a Client Reporter.

Under no circumstances, including but not limited to negligence, shall America Learns be liable for any special, direct, indirect, or consequential damages that result from the use of, or the inability to use, the Impact Suite. In the event that applicable law provides that the above exclusion of liability for incidental or consequential damages does not apply to Client, then in no event shall America Learns' total liability to Client for all damages, losses, and causes of action, whether in contract, negligence, tort, or otherwise, exceed the amount already paid by Client to America Learns.

E. Disclaimer as to content

The materials and strategies in the Impact Suite are provided "as is" and without warranties of any kind, either express or implied. To the fullest extent permissible pursuant to applicable law, America Learns disclaims all warranties, express or implied, with respect to such materials and strategies, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose. America Learns does not warrant or make any representations regarding the use or the results of the use of the materials in the Impact Suite in terms of their correctness, accuracy, reliability, or otherwise.

F. Indemnification

Client agrees to defend, indemnify and hold harmless America Learns against all claims, liability, damages, expenses or demands arising out of the sole gross negligence or willful misconduct of Client in connection with this License Agreement.

America Learns agrees to defend, indemnify and hold harmless Client, and its agents, officials, officers, representatives and employees against all claims, liability, damages, expenses or demands arising out of the sole gross negligence or willful misconduct of America Learns in connection with this License Agreement.

G. Notices

All notices and other communications to be provided from one party to the other shall be in writing and delivered by e-mail or by mail (courier or otherwise) to the address appearing below the applicable

party's signature. This address may be changed at any time by the applicable party with written notice to the other party.

H. Amendments & Waivers

This License may only be amended or waived in writing. Such amendment or waiver must be signed by America Learns and Client.

I. Termination

This License will end at the end of the License Period. In the event Client decides not to extend this License, or terminates this License Agreement, America Learns will continue to provide Client with access to the Impact Suite for fifteen (15) days after termination so that Client can download and save any information it desires. During this period, Client understands that it has no right to download, copy or save any information from the National Learning Community. Client's right to access or use data in the Impact Suite will automatically cease following such fifteen (15) day period, and thereafter America Learns shall have no obligation to maintain any Client data or forward any data to Client.

America Learns reserves the right to suspend or terminate this License (and accordingly, suspend or terminate Client's access to the Impact Suite), and withhold or delete all Client data, if Client's payment on account becomes 60 or more days delinquent. America Learns reserves the right to withhold or delete any Client Data without notice for Client's breach of Parts 4.A or 4.E of this License Agreement.

Client may terminate this License Agreement at any time, with or without cause, upon written notice to America Learns.

J. Governing Law; Consent to Impact Suite; Waiver of Immunity; Waiver of Jury Trial

This License Agreement shall be governed by California law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this License Agreement or America Learns shall be subject to the exclusive jurisdiction of the state and federal courts located in Los Angeles, California. America Learns agrees to accept service of any and all process in any such suit, action or proceeding by service of copies of such process to America Learns' address appearing below its signature; Client agrees to accept service of any and all process in any such suit, action or proceeding by service of copies of such process to Client in care of the County of Ventura, Clerk of the Board, Hall of Administration, Fourth Floor, 800 South Victoria Avenue, Ventura, California.. This address may be changed at any time with written notice. EACH OF AMERICA LEARNS AND CLIENT HEREBY WAIVES TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH THIS LICENSE, WHICH WAIVER IS INFORMED AND VOLUNTARY.

K. Severability

If any one or more of the provisions contained in this License should be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of this License shall not in any way be affected or impaired thereby.

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- PART 8: SIGNATURES & EXECUTION

America Learns, LLC

By: 

Name: Gary Kosman


Title: CEO

Address for contact/notices:

10718 White Oak Ave., Suite 4
Los Angeles, CA 91344

e-mail: hello@americalearns.net

Client

By: 

Name: STEVE BENNETT

Title: CHAIR, BOARD OF SUPERVISORS

ATTEST: MICHAEL POWERS
Clerk of the Board of Supervisors
County of Ventura, State of California

By: 
Deputy Clerk of the Board

Address for contact/notices:

Ventura County Library
READ Adult Literacy Program
Carol Chapman, Program Manager
5600 Everglades Street, Suite A
Ventura, CA 93003

e-mail: carol.chapman@ventura.org

