



# BookNook Independent Contractor Agreement

This Independent Contractor Agreement (the “Agreement”) constitutes a legal agreement between BookNook Inc., a Delaware corporation (the “Company,” “BookNook”), and \_\_\_\_\_ (“Tutor,” “Contractor”), an independent contractor/enterprise engaged in the business of educating students and shall govern Tutor’s use of BookNook’s website and technology platform (“BookNook Platform”) as of \_\_\_\_\_ (the “Effective Date”).

BookNook’s Tutors, using a tablet-based program, will assist students in 1-on-1 or small groups with reading and math intervention. Tutors provide both virtual and on-site structured instructional activities based on proven best practices for students in grades K-8. In order for BookNook to effectuate its service, BookNook requires the use of Tutors to provide services to partnering Local Education Agencies (“LEAs”).

Tutor desires to enter into this Agreement with BookNook to give Tutor the right to access and utilize the BookNook Platform to generate business through the education of students at partnering LEAs.

**IMPORTANT: PLEASE REVIEW THIS AGREEMENT CAREFULLY. IN PARTICULAR, PLEASE REVIEW THE ARBITRATION PROVISION IN SECTION 13, AS IT REQUIRES THE PARTIES TO RESOLVE DISPUTES ON AN INDIVIDUAL BASIS, TO THE FULLEST EXTENT PERMITTED BY LAW, THROUGH FINAL AND BINDING ARBITRATION. BY ELECTRONICALLY EXECUTING THIS AGREEMENT, TUTOR ACKNOWLEDGES THAT TUTOR HAS READ AND UNDERSTOOD ALL OF THE TERMS OF THIS AGREEMENT, INCLUDING SECTION 13, AND HAS TAKEN TIME TO CONSIDER THE CONSEQUENCES OF EXECUTING THIS AGREEMENT.**

In consideration of the above, as well as the mutual promises described herein, Tutor and BookNook (collectively, the “Parties”) agree as follows:

## 1. Use of the BookNook Platform.

- 1.1 Authorization to Use. Subject to the terms and conditions contained herein, this Agreement shall give the Tutor the privilege to utilize the BookNook Platform (the “Platform”), and to receive the agreed upon fees for each class Tutor fully completes for eligible Students at partnering LEAs in accordance with the terms of this Agreement, and the parameters of the Tutoring session as specified by the LEA.
- 1.2 Tutor Schedule. Tutor shall have complete discretion to determine whether, when, and how often Tutor will be available to teach classes for Students, and Tutor shall have no obligation to be available to teach classes on any specific day, at any specific time, for any specific duration, or with any specific frequency, except as specifically agreed by Tutor individually. Specifically, LEAs will be able to reserve proposed and finalized class schedules but Tutor has full discretion and control to designate the days, and times, that Tutor chooses to be available. BookNook will provide a tool to facilitate scheduling in accordance with the Tutor’s self-availability. If an LEA reserves a class with Tutor on a day and time that Tutor chooses to be available to teach classes for Students, Tutor will be deemed to have “accepted” the class, and shall be contractually obligated to complete the class in accordance with the terms of this Agreement, and the specific parameters of the class specified by



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the LEA. However, Tutor retains the option to cancel classes subject to and in accordance with BookNook's then-current cancellation and no-show policy.

- 1.3 Tutor Location. In addition to determining whether, when, and how often Tutor will be available to teach classes arranged through the BookNook Platform, Tutor shall also have complete discretion to determine the location(s) in which Tutor will be located when teaching classes, so long as: (i) the environment in the location(s) selected by Tutor is/are suitable for teaching Students; and (ii) Tutor, if applicable, possesses all licenses, certifications, permits, and other legal prerequisites necessary to teach classes in such location(s).
- 1.4 Tutor Evaluations. Tutor understands that LEAs, Students, and Students' legal guardians/parents may rate the quality of Tutor's services and provide comments and/or feedback.
- 1.5 No Guarantee. Nothing in this Agreement shall be construed as a guarantee that Tutor shall be guaranteed any particular number of classes during any particular time period.

## **2. Tutor's Representations and Warranties; Tutor's Provision of Services to Students.**

- 2.1 Tutor's Representations. Tutor represents that Tutor is an independently established enterprise in the business of providing the educational services contemplated by this Agreement, and that Tutor satisfies all legal requirements, and maintains all licenses, permits, and certificates necessary to perform such services. Tutor further represents that Tutor has not previously signed an agreement with BookNook to offer Tutor's services on the Platform using different personally identifying information.
- 2.2 Tutor Compliance. Tutor agrees to teach each class accepted pursuant to this Agreement in compliance with all applicable laws and regulations in the location in which Tutor performs the class. Tutor further agrees not to use the BookNook Platform for any purpose that is unlawful or otherwise prohibited by this Agreement or in any manner that could damage, disable, overburden, or impair the BookNook Platform.
- 2.3 Tutor Expectations. Tutor further agrees not to divert or recruit partner LEA's eligible Students away from the BookNook Platform for Tutor's own benefit, or the benefit of any third party. Tutor further agrees not to use offensive or derogatory language during classes, or discuss topics that may potentially be harmful, offensive, or otherwise sensitive in nature (e.g., sexual, violent, religiously or politically contentious, etc.).
- 2.4 Full Performance. Tutor agrees to devote Tutor's best efforts, skills, and abilities to the performance of each class Tutor accepts or is otherwise bound to complete under this Agreement. Generally, full performance will include, but is not limited to: (i) timely commencement of the class at the schedule start time; (ii) full provision of the requested class and lesson, in accordance with the designated curriculum and parameters specified by the LEA and/or eligible Student, for the full duration of the



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class, in a professional manner, consistent with industry standard, which may include reviewing the curriculum and/or the Student's personal information in advance of the class, and encouraging the Student during the class, as deemed appropriate by Tutor; and (iii) timely completion and submission of any applicable "Class Feedback" and/or "Unit Assessment" materials for Students.

- 2.5 Professional Appearance. Tutor shall not be required to wear a uniform or other clothing of any type bearing BookNook's name or logo. Tutor is free to wear any apparel or clothing of Tutor's choosing, including apparel or clothing advertising Tutor's business and services, when teaching classes arranged through the BookNook Platform, so long as Tutor maintains a professional appearance consistent with the standards generally adhered to in the profession.
- 2.6 Tutor's Responsibilities. As an independent contractor/enterprise, Tutor shall be solely responsible for determining how to operate Tutor's business and how to teach classes arranged through the BookNook Platform. BookNook shall have no right to, and shall not, control the manner or prescribe the method Tutor uses to teach classes. Instead, Tutor shall be solely responsible for determining the most effective manner to perform the services relating to each class. The parties acknowledge and agree that any provisions of this Agreement reserving certain authority in BookNook have been inserted solely to achieve compliance with federal, state, or local laws, rules, and interpretations thereof.
- 2.7 Non-Exclusive Arrangement. The parties recognize that both Tutor and BookNook are, or may be engaged in, similar arrangements with others. Nothing in this Agreement shall limit or restrict Tutor from entering into arrangements with others that are similar to that created by this Agreement, or from performing teaching or Tutoring services for other clients, or for or on behalf of any business, during or after the term of this Agreement.
- 2.8 No-Conflicts. Tutor represents and warrants that Tutor has no outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement, or that would preclude Tutor from fully complying with the provisions of this Agreement, and further certifies that Tutor will not enter into any such conflicting agreement during the term of this Agreement. This provision shall not be construed as preventing Tutor from engaging in any other business activity, including competing business activities, so long as they do not violate this provision.
- 2.8.1 Non-current BookNook Tutor. Tutor represents and warrants that Tutor is not currently under contract with any other organization, including and especially VIPKid, to serve BookNook. If BookNook should determine at a later date that Tutor is in fact under contract with another organization to serve BookNook, then this contract may terminate immediately.

### 3. Independent Contractor Relationship.

- 3.1 This Agreement is between two co-equal, independent business enterprises that are separately owned and operated. This Agreement creates the relationship of



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principal and independent contractor and not that of employer and employee. The Parties are not employees, agents, joint venturers, or partners of each other for any purpose.

- 3.2 Neither party shall have the right to bind the other by contract or otherwise except as specifically provided in this Agreement.
- 3.3 **By electronically executing this Agreement, Tutor represents and acknowledges that: (i) Tutor understands that this Agreement creates the relationship of principal-independent contractor, not employer-employee; (ii) Tutor specifically desires and intends to operate as an independent contractor; and (iii) as an independent contractor, Tutor is not entitled to workers' compensation benefits provided by BookNook, or unemployment benefits following termination of the Parties' relationship, and Tutor is require to pay all federal, state, and local income taxes on any monies earned pursuant to this Agreement.**

## 4. Tutor's Equipment and Personnel.

- 4.1 Equipment and Supplies. Tutor shall be responsible for providing, solely at Tutor's expense, well-functioning equipment and supplies needed to teach classes for Students, including, but not limited to: headset(s), microphone(s), camera(s), computer(s), and an internet connection with adequate speed, all of which must satisfy the minimum device, system, and browser requirements for the BookNook's Platform. Tutor shall direct in all aspects the operation of any and all equipment and supplies used in the performance of this Agreement and shall exercise full discretion and judgment as an independent business in determining the means and methods of performance under this Agreement.
- 4.2 Costs and Expenses. Tutor is solely responsible for all costs and expenses arising from Tutor's performance of services covered by this Agreement, including, but not limited to, costs related to Tutor's equipment, supplies, and personnel, including wages, employment taxes, excise taxes, permits of all types, gross revenue taxes, internet costs, office space costs, computer equipment costs, and any other tax, fine or fee imposed or assessed against Tutor by any government authority, including, but not limited to, any state, local, or federal authority as a result of an action by Tutor or Tutor's employees, agents, or subcontractors in the performance of services covered by this Agreement. Unless mandated by law, BookNook shall have no authority to withhold federal, state, or local income taxes, social security taxes, unemployment insurance taxes/contributions, or any other local, state or federal tax on behalf of Tutor or Tutor's employees, agents, or subcontractors.
- 4.3 Additional Personnel. Tutor shall furnish at Tutor's own discretion, selection, and expense any and all personnel Tutor engages in connection with Tutor's performance of services covered by this Agreement, including any teaching helpers or assistants. Tutor shall be solely responsible for the direction and control of the personnel Tutor engages in connection with Tutor's performance of services covered by this Agreement.

## 5. Payment for Services.

- 5.1 Payment. In exchange for full performance of a class, Tutor shall be entitled to receive the agreed upon fees for the applicable class type, as set forth in addenda to this Agreement. The fees Tutor charges for Tutor's services pursuant to any addenda to this Agreement, and any incentive fees Tutor receives under this Agreement, represent the value of the services provided under the Agreement, and constitute the entire amount to be paid under this Agreement.
- 5.2 Payment Schedule. Payment for completed classes shall be transferred on a bi-weekly basis. Tutor acknowledges and agrees that BookNook is only responsible for transferring payment to the bank account designated during onboarding, in accordance with this Section, and that the particular date upon which Tutor receives payment following the transfer may vary from bank to bank. BookNook reserves the right to modify and/or change the payment schedule set form in Section 5.2, by providing reasonable notice to Tutor.
- 5.3 IRS Form 1099 Reporting. BookNook shall report all payments made to Tutor on a calendar year basis using an appropriate IRS Form 1099, if the volume of payments to Tutor qualify. Tutor agrees to report all such payments to the appropriate federal, state, and local taxing authorities. Upon execution of this Agreement, Tutor agrees to provide BookNook with the Tutor's business license number, if any, Tutor's federal employee identification number and/or Social Security Number, and the Tutor's banking information for payment processing and tax reporting purposes. Tutor acknowledges that Tutor may incur transfer fees imposed by Tutor's banking institution.

## 6. Service Failures and Payment Disputes.

- 6.1 Failure to Perform. If Tutor fails to fully perform, in accordance with Section 2.3 of this Agreement, a class Tutor accepts or is otherwise contractually bound to complete in accordance with parameters specified by the LEA, or the terms of this Agreement or addenda to this Agreement due to Tutor's action or omission, it shall constitute a service failure under this Agreement (a "Service Failure"), and Tutor shall forfeit all or part of the agreed upon fees for that class. In addition, repeated Service Failures by Tutor shall be a material breach of this Agreement. Additional information regarding Service Failures may be set forth in addenda to this Agreement.
- 6.2 Withholding of Fees. Except as otherwise provided in this Agreement, any withholding of fees for a Service Failure shall be based upon proof provided by the LEA, Student, TUTOR, and any other party with information relevant to the dispute. BOOKNOOK shall make the initial determination as to whether a Service Failure was the result of Tutor's action/omission. TUTOR shall have the right to challenge BOOKNOOK's determination in accordance with the Arbitration Provision (Section 13).



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- 6.3 Non-Payment. If payment is owed to Tutor under the terms of this Agreement, and such payment is not made in a timely manner, Tutor shall have the right to seek payment in accordance with the Arbitration Provision (Section 13).

## 7. Indemnification and Limitation of Liability.

- 7.1 Indemnification from Tutor's Actions. Tutor agrees to indemnify, defend, protect, and hold harmless BookNook from any and all claims, demands, damages, suits, losses, liabilities, and causes of action arising directly or indirectly from, as a result of or in connect with, Tutor's actions (or omissions) arising from the performance of services covered by this Agreement, including liability for civil and/or criminal conduct, or any liability arising from Tutor's failure to comply with the terms of this Agreement. Tutor's obligations may include BookNook's cost of defense as well as the payment of any final judgment rendered against BookNook.
- 7.2 Indemnification from Tax Liabilities. Tutor agrees to indemnify, defend, protect, and hold harmless BookNook from any and all tax liabilities and responsibilities for payment of all applicable taxes, including, but not limited to all payroll taxes, self-employment taxes, workers' compensation premiums, and any contributions imposed or required under federal, state, and local laws, that are owed by Tutor with respect to Tutor's provision of services covered by this Agreement.
- 7.3 Indemnification from Tutor's Business Costs. Tutor shall be responsible for indemnifying and holding harmless BookNook from all costs of Tutor's business, including, but not limited to, the expense and responsibilities for any and all applicable local, state, or federal licenses, permits, taxes, and assessments of any and all regulatory agencies, boards or municipalities.
- 7.4 Limitation of Liability. EXCEPT FOR ANY LIABILITY WHICH CANNOT BY LAW BE EXCLUDED OR LIMITED, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, PUNITIVE DAMAGES OR LOSS PROFITS OF ANY KIND IN CONNECTION WITH THIS AGREEMENT (INCLUDING LOSS OF USE, DATA, REVENUES, BUSINESS OR PROFITS, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY), EVEN IF CONTRACTOR HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. THE LIABILITY OF COMPANY TO CONTRACTOR IS LIMITED TO NO MORE THAN THE AMOUNTS PAID BY COMPANY TO CONTRACTOR AS SET FORTH IN THE AGREEMENT FROM WHICH THE APPLICABLE CLAIM AROSE. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE THE LIABILITY OF EITHER PARTY FOR FRAUD, FRAUDULENT MISREPRESENTATION OR DECEIT; BREACHES OF OBLIGATIONS OF CONFIDENTIALITY; OR ANY VIOLATIONS OF APPLICABLE LAW OR VIOLATION OF THIRD PARTIES COPYRIGHT.

## 8. Insurance.

- 8.1 BookNook. Tutor acknowledges and agrees that BookNook shall not obtain or maintain insurance coverage of any kind, including workers' compensation insurance, on behalf of Tutor or any personnel Tutor hires or engages.

8.2 Tutor. During the term of this Agreement, to the extent required by law, Tutor agrees to maintain insurance that will insure against any and all liabilities, damages, injuries, or expenses that may arise from or result from the actions or omissions of Tutor and any of Tutor's personnel. Such insurance may include, without limitation, workers' compensation or occupational accident insurance (where permitted by law).

## 9. Disclaimers.

9.1 Tutor's Own Risk. Tutor acknowledges and agrees that Tutor's use of the BookNook Platform is at Tutor's own risk. Tutor further acknowledges and agrees that Tutor is responsible for Tutor's interactions with Students or other third parties with whom Tutor interacts in connection with Tutor's use of the BookNook Platform.

9.2 Condition of BookNook Platform. BookNook provides, and Tutor accepts, use of the BookNook Platform on an "as is" and "as available" basis, without warranty of any kind. Without limiting the foregoing, BookNook hereby disclaims all warranties and conditions of merchantability, fitness of a particular purpose, workmanlike effort, title and non-infringement. BookNook makes no representations about the suitability, reliability, availability, timeliness, and accuracy of the information, products, and/or services on the BookNook Platform for any purpose. BookNook also makes no representations, warranties, or guarantees with respect to the actions or inactions of Students, and expressly disclaims all liability for any act or omission of BookNook, LEA, Student, or other third-party.

## 10. Confidentiality.

10.1 The parties understand that in the performance of this Agreement, they may disclose or otherwise be exposed to confidential and proprietary information ("Confidential Information"). Confidential Information includes, but is not limited to, the following: data regarding the identity and contact information of Students and their parents, BookNook's curriculum and related materials, class recordings, and business, financial, technical, or strategic information and such other non-public information of each party that such party designates as being proprietary or confidential or of which the other party should reasonably know should be treated as confidential. All Confidential Information shall remain the exclusive property of the disclosing party. Nothing in this Agreement shall be deemed to grant a party any rights in or to the Confidential Information disclosed by the other party, or any part thereof.

10.2 Except upon order of government authority having jurisdiction, the parties covenant and agree that they shall not disclose to third parties or use for their own benefit or the benefit of any third party, any Confidential Information disclosed by or belonging to the other party. However, Tutor may utilize BookNook curriculum and related materials when teaching classes arranged through the BookNook Platform. In addition, the parties may disclose certain Confidential Information to their employees, agents, subcontractors and representatives (i) who have a reasonable need to know such Confidential Information to perform the services



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contemplated by this Agreement; (ii) who have been advised of the confidential nature of the information; and (iii) who have agreed in writing to be bound to obligations of confidentiality and non-use of Confidential Information no less protective than the terms set forth in this provision. The parties shall be responsible for any breach of this provision by their employees, agents, subcontractors and representatives.

- 10.3 The duty of non-disclosure shall not apply to information in the following circumstances: (i) the information was in the public domain at the time it was communicated to the recipient-party or subsequently enters the public domain through no fault of the recipient-party; (ii) the recipient-party can prove such information was independently developed by the party or was already known to the party at the time of receipt; (iii) such information was communicated rightfully to the recipient-party free of any obligation of nondisclosure and without restriction as to use; or (iv) such information is required to be disclosed by the recipient-party pursuant to judicial order or other compulsion of law, provided that the recipient-party shall promptly notify the other party of any such order and comply with any protective or similar order imposed on such disclosure. In the event of an unauthorized disclosure of Confidential Information, the recipient-party shall bear the burden of proving one or more of the above exceptions apply.

## 11. Data Sharing.

- 11.1 Upon request, BookNook may share Tutor's personally identifiable information ("PII", "Protected Information") with its school partners and its affiliates ("Representatives") for the limited purpose of facilitating the Tutoring Services. This Protected Information may include first and last name, or other information which can be used to distinguish or trace an individual's identity either directly or indirectly through linkages with other information. For the sake of clarity, BookNook will act as the Disclosing Party ("Disclosing Party") and the school partner and its Representatives and third-party data processor/administrator shall act as the Receiving Party ("Receiving Party").
- 11.2 Tutor acknowledges that BookNook has and will enter into school partner agreements and accompanying data sharing agreements to, among other things, establish safeguards over Protected Information. BookNook shall cause the school partner and its Representatives and third-party data processor/administrator, at all times implement and maintain reasonable and appropriate privacy measures and administrative, physical and technical security measures to safeguard the confidentiality, integrity, and availability of the Disclosing Party's PII. Such privacy and security measures shall be compliant with applicable law and applicable privacy policies and consumer notifications. Receiving Party shall, and shall cause its Representatives to, limit access to the Disclosing Party's PII to those of Receiving Party's and its Representatives who have a specific need for such access in order for Receiving Party and its Representatives to perform their respective obligations and exercise their respective rights and remedies under this Agreement or to otherwise perform a legitimate business purpose, and shall not transfer or give access to any other third party (other than any such Representatives or



third-party data processor/administrator for such purposes) without the Disclosing Party's approval (not to be unreasonably withheld, conditioned or delayed).

- 11.3 As a condition of this Agreement, Tutor acknowledges and agrees that it is necessary for some of the Tutor's personal identifiable information (such as first and last name) to be provided to a school partner and its Representatives and if needed, a third party data processor that administers the school partner's data portal. These transfers will be made pursuant to a separate data sharing agreement that requires the school partner, its Representatives and any third party data processor/administrator to provide adequate levels of protection for data privacy and security interests in accordance with all applicable federal and state privacy protection laws. By accepting this Agreement, the Tutor acknowledges having been informed of the processing of Tutor's personal identifiable information described in the preceding paragraph, and consents to BookNook collecting and transferring to BookNook's and to its school partners and Representatives, and to the extent applicable, any independent third party data processor/administrator, Tutor's personal data that is necessary to administer the school partner agreement between it and BookNook. Tutor understands that his or her personally identifiable information may be transferred, processed and stored outside of the Participant's home state but is subject to the same federal data protection laws for the purposes mentioned in this Agreement.

## **12. Intellectual Property.**

- 12.1 Ownership. As between Tutor and BookNook, BookNook, as well as its subsidiaries, affiliates, related companies and licensees, own the BookNook Platform and all future modifications to the BookNook Platform including all Intellectual Property Rights (as defined below) therein. Intellectual Property includes, without limitation, all trademarks, service marks, inventions, works for authorship, designs, know-how, ideas and information, software (including object code and source code), design, text, photographs, images, illustrations, audio, video, artwork, graphic material, or other copyrightable elements, and the selection and arrangements thereof, trademarks, service marks, trade names, trade dress, look and feel, patents, patentable materials, and causes of action related thereto, including BookNook curriculum and related materials, and recordings of classes arranged through the BookNook Platform.
- 12.2 Neither this Agreement nor Tutor's use of the BookNook Platform conveys or grants to Tutor any rights in or related to the BookNook Platform except for the limited license granted below. Other than in connection with Tutor's performance of services covered by this Agreement, Tutor agrees to not use BookNook's trademarks, logos or slogans, or any of BookNook's other intellectual property, for any commercial purposes, without BookNook's prior written consent.
- 12.3 Non-Exclusive License. Subject to the terms and conditions of this



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Agreement, BookNook hereby grants Tutor a non-exclusive, non-transferable, non-sublicensable, non-assignable, revocable license, during the term of this Agreement, to use the BookNook Platform solely for the purpose of facilitating and teaching classes for Students designated by the LEA. This Agreement does not grant Tutor any rights in the BookNook Platform, or the Intellectual Property rights therein, other than the right to utilize the BookNook Platform in accordance with, and subject to, the terms and conditions of this Agreement. All rights not expressly granted to Tutor are reserved by BookNook and/or its subsidiaries, affiliates, related companies, and licensees.

- 12.4 Recording of Classes. Tutor acknowledges that classes arranged through the BookNook Platform may be recorded to enable Students to access the class recordings for educational purposes, and Tutor consents to such recordings. Tutor further consents to the use and/or review of such recordings by BookNook and its subsidiaries, affiliates, related companies and licensees for: (i) marketing and promotional purposes; (ii) safety and security reasons; (iii) assessing technological issues; and (iv) internal instructional and/or informational purposes. Tutor also consents to the use by BookNook and its subsidiaries, affiliates, related companies and licensees, of Tutor's name, portrait, likeness, appearance, and/or photograph, for marketing and promotional purposes. Tutor agrees to treat any class recordings generated in connection with the performance of services covered by this Agreement as Confidential Information belonging to BookNook, subject to the obligations specified in Section 10 of this Agreement.
- 12.5 To the extent any of the foregoing is ineffective under applicable law, Tutor hereby provides any and all ratifications and consents necessary to accomplish the purposes of the foregoing to the extent possible. Tutor will confirm any such ratifications and consents from time to time as requested by BookNook.

## 13. Term and Termination.

- 13.1 Terms. This Agreement shall commence on the Effective Date (as defined below) and shall continue in effect for a period of twelve (12) calendar months (the "Initial Term"), or until terminated as follows, whichever occurs first: (i) at any time upon the mutual written consent of the Parties hereto; (ii) if one party has materially breached the Agreement, immediately upon written notice to the breaching party, with such notice specifying the breach relied upon; and (iii) by either party without cause upon thirty (30) days' written notice to the other party, with the date of mailing commencing the thirty (30) day period.
- 13.2 Renewal Terms. BookNook may automatically renew this Agreement for additional twelve (12) calendar month terms (the "Renewal Term"), unless Tutor provides written notice that Tutor does not want the contract renewed within thirty (30) days prior to the end of the Initial Term or Renewal Term. BookNook's renewal of this Agreement is subject to Tutor's submission to a background check in accordance with applicable law, if requested by



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BookNook. Tutor agrees that the terms of the Agreement shall remain the same for each Renewal Term, unless modified by BookNook.

- 13.3 Effective Date. If Tutor has not previously entered into an agreement with BookNook to use the BookNook Platform, or if Tutor's prior agreement with BookNook has already expired, "Effective Date" shall mean the date immediately following the date on which this Agreement is electronically executed by Tutor (Pacific Standard Time). If Tutor is currently a party to an agreement with BookNook to use the BookNook Platform or entering into this Agreement to renew an existing agreement with BookNook that is still in effect, "Effective Date" shall mean the date immediately following the expiration date of the existing agreement.
- 13.4 Material Breach. The following shall constitute a material breach of this Agreement:
- 13.1.1 Repeated Service Failures by Tutor;
  - 13.1.2 Tutor's submission of false information to BookNook, including for the purpose of obtaining fees to which Tutor is not entitled, and Tutor's establishment of multiple accounts on the BookNook Platform for fraudulent purposes;
  - 13.1.3 Tutor or someone with access to Tutor's account engages in conduct that a reasonable person would find threatening, highly offensive, harassing, or abusive, in connection with Tutor's performance of services covered by this Agreement, or Tutor is otherwise found to be unprofessional or unsuitable to provide services arranged through the BookNook Platform, in the reasonable opinion of BookNook;
  - 13.1.4 Failure of BookNook to transfer all fees due and owing within thirty (30) days of the date the amount became due under this Agreement;
  - 13.1.5 Tutor engages in conduct that, in the reasonable opinion of BookNook, may injure or tend to injure BookNook or the reputation of BookNook;
  - 13.1.6 Tutor uses offensive or derogatory language during classes, or discusses topics that may potentially be harmful, offensive or other sensitive in nature (e.g., sexual, violent, religiously or politically contentious, etc.);
  - 13.1.7 Tutor's repeated receipt of low ratings or negative comments and feedback from Students and their parents;
  - 13.1.8 Tutor exceeds the maximum number of class cancellations and/or no-shows set forth in BookNook's then-current cancellation and no-show policy during the Initial Term or a Renewal Term of this Agreement;

- 13.1.9 Tutor engages or hires a third-party to teach a class arranged through the BookNook Platform on behalf of Tutor or under Tutor's BookNook account, or a third-party otherwise gains access to Tutor's BookNook account due to Tutor's action or omission and the third-party engages in inappropriate behavior;
  - 13.1.10 Tutor fails to provide tools, equipment, and supplies needed to full perform services covered by this Agreement, or Tutor's equipment fails to satisfy the minimum technological, system, or browser requirements for use of the BookNook Platform;
  - 13.1.11 Tutor has and/or had more than one teaching account registered on the BookNook Platform at the same time, and/or BookNook previously terminated Tutor's contract;
  - 13.1.12 Tutor fails to consent to a required background check administered in accordance with applicable law, or Tutor fails to pass a background check administered with Tutor's consent in accordance with applicable law; or
  - 13.1.13 Violation of any law or regulation governing the provision of services in connection with any class arranged through the BookNook Platform, including failure to maintain all licenses and certifications required for performance of the services contemplated by this Agreement.
- 13.5 Termination. The above list is not exhaustive. In addition, Tutor acknowledges and agrees that if Tutor materially breaches the Agreement, BookNook may, in its sole discretion, limit or restrict Tutor's access to the BookNook Platform, with or without notice.
- 13.6 Obligation upon Contract Termination. Upon termination of this Agreement, for any reason, Tutor agrees to immediately, at Tutor's sole expense, return to BookNook any documents or other property of BookNook in Tutor's possession, including any Confidential Information.

## **14. Arbitration.**

- 14.1 Arbitration of Claims. In the event of a dispute between the parties, the parties agree to resolve the dispute as described in this Section (the "Arbitration Provision"). This Arbitration Provision is governed by the Federal Arbitration Act (9 U.S.C. § 1, et seq.) and evidences a transaction involving commerce. In the event, but only in the event, the Arbitrator or a court determines the Federal Arbitration Act does not apply, the parties agree to 1) apply the laws of the state of California; but if not applicable, the parties then agree to 2) apply the laws of the state of Delaware; but if not applicable; then the parties agree to 3) apply the state law governing arbitration agreements in the state in which Tutor performs the majority of services covered by this Agreement shall apply. This Arbitration Provision applies to any past, existing

or future claim, regardless of the date of its accrual, brought by either Tutor or BookNook, arising out of or related to this Agreement, Tutor's relationship with BookNook, including without limitation, Tutor's classification as an independent contractor or termination of the relationship with BookNook, and Tutor's provision of services to LEAs and Students, whether arising under federal, state, or local law. The terms of this Arbitration Provision will remain in force after the parties' contractual relationship ends. **Except as it otherwise provides, this Arbitration Provision is intended to apply to the resolution of disputes that otherwise would be resolved in a court of law or before any forum other than arbitration. This Arbitration Provision requires all such disputes to be resolved only by an arbitrator through final and binding arbitration ON AN INDIVIDUAL BASIS, and not by way of court or jury trial, or by way of class, collective, OR REPRESENTATIVE action.**

14.1.1 Claims Covered by Arbitration Provision. Unless carved out below, claims involving the following disputes shall be subject to arbitration under this Arbitration Provision regardless of whether brought by Tutor, BookNook or any agent acting on behalf of either: (1) disputes arising out of or related to this Agreement; (2) disputes arising out of or related to Tutor's relationship with BookNook, including without limitation, disputes concerning Tutor's classification as an independent contractor, or termination of the relationship with BookNook; (3) Tutor's provision of services to Students; and (4) except as otherwise set forth in Section 13.B, Class Action Waiver, below, disputes arising out of or relating to the interpretation or application of this Arbitration Provision, including the validity, enforceability, revocability, conscionability, scope, or breach of the Arbitration Provision, or any portion of the Arbitration Provision. This Arbitration Provision also applies, without limitation, to disputes regarding any city, county, state or federal wage-hour law, trade secrets, unfair competition, compensation, meal or rest periods, expense reimbursement, uniform maintenance, training, termination, retaliation, discrimination or harassment and claims arising under the Defend Trade Secrets Act, Americans With Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Civil Rights Act of 1964, 42 U.S.C. §1981, the Rehabilitation Act, the Civil Rights Acts of 1866 and 1871, the Civil Rights Act of 1991, the Pregnancy Discrimination Act, Equal Pay Act, Employee Retirement Income Security Act (except for claims for employee benefits under any benefit plan sponsored by BookNook and (a) covered by the Employee Retirement Income Security Act of 1974 or (b) funded by insurance), Genetic Information Non-Discrimination Act, Uniformed Services Employment and Reemployment Rights Act, Worker Adjustment and Retraining Notification Act, Older Workers Benefits Protection Act of 1990, Occupational Safety and Health Act, Consolidated Omnibus Budget Reconciliation Act of 1985, False Claims Act, and state or local statutes or regulations addressing the same or similar subject matters, and all other federal, state, and/or local statutory and legal or common law claims (including, without limitation, torts) arising out of or relating to this Agreement, Tutor's relationship with BookNook, including

without limitation, disputes concerning Tutor's classification as an independent contractor, or termination of that relationship, and Tutor's provision of services to Students. Except as it otherwise provides, this Arbitration Provision also applies, without limitation, to all such disputes between Tutor and BookNook's officers, agents, employees, fiduciaries, administrators, affiliates, subsidiaries, parents, and all successors and assigns of any of them, all of which are intended third-party beneficiaries of this Arbitration Provision.

- 14.1.2 Limitations of Application of This Arbitration Provision. This Arbitration Provision does not apply to claims for workers' compensation, state disability insurance, or unemployment insurance benefits. This Arbitration Provision does not prevent Tutor from filing unfair labor practice charges with the National Labor Relations Board ([www.nlr.gov](http://www.nlr.gov)). BookNook will not retaliate against Tutor for filing such a charge. Nothing in this Arbitration Provision prevents Tutor from making a report to or filing a claim or charge with a government agency, including, without limitation, the Equal Employment Opportunity Commission, U.S. Department of Labor, U.S. Securities and Exchange Commission, National Labor Relations Board, or Office of Federal Contract Compliance Programs. Nothing in this Arbitration Provision prevents the investigation by a government agency of any report, claim or charge otherwise covered by this Arbitration Provision. This Arbitration Provision also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if the claims would otherwise be covered by this Arbitration Provision. Nothing in this Arbitration Provision prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a claim in arbitration. BookNook will not retaliate against Tutor for filing a claim with an administrative agency or for exercising rights (individually or in concert with others), if any, under Section 7 of the National Labor Relations Act.
- 14.2 Class Action Waiver. BookNook and Tutor mutually agree that by entering into this agreement to arbitrate, both waive their right to have any dispute or claim brought, heard or arbitrated as, or to participate in, a class action, collective action and/or representative action, and an arbitrator shall not have any authority to hear or arbitrate any class, collective and/or representative action ("Class Action Waiver"). Notwithstanding any other provision of this Agreement, the Arbitration Provision, or the JAMS Comprehensive Arbitration Rules & Procedures (discussed below), disputes regarding the validity, enforceability, revocability, conscionability, scope or breach of the Class Action Waiver may be resolved only by a court and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action and (2) there is a final judicial determination that all or part of the Class Action Waiver is invalid or unenforceable, the class, collective, and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall



# BookNook Independent Contractor Agreement

be enforced in arbitration. The Class Action Waiver shall be severable in any case in which the dispute is filed as an individual action and severance is necessary to ensure that the individual action proceeds in arbitration. The parties recognize that controlling law in California holds that the right to pursue private attorney general representative actions on behalf of the State of California pursuant to the California Labor Code may not be waived by a private, pre-dispute agreement, and therefore are not subject to this Class Action Waiver and may be maintained in a court of law. However, the parties agree that a claim Tutor brings as an allegedly aggrieved worker for recovery of underpaid wages or other individual relief (as opposed to a representative claim for civil penalties) is arbitrable and subject to this Class Action Waiver. Further, to the extent there is any controlling judicial determination providing that the right to pursue private attorney general representative actions on behalf of the State of California pursuant to the California Labor Code may be waived by a private, pre-dispute agreement, the parties agree any such determination shall apply to this Arbitration Provision and Class Action Waiver.

14.3 Arbitration Procedure. The Arbitrator will be selected by mutual agreement of Tutor and BookNook. Unless Tutor and BookNook mutually agree otherwise, the Arbitrator will be an attorney licensed to practice in the location where the arbitration proceeding will be conducted or a retired federal or state judicial officer who presided in the jurisdiction where the arbitration will be conducted. If for any reason the parties cannot agree to an Arbitrator, then the Arbitrator will be selected using the strike and rank method from a list of five (5) neutral arbitrators provided by JAMS. If the parties cannot agree to an Arbitrator, and JAMS is unavailable, either party may apply to a court of competent jurisdiction with authority over the location where the arbitration will be conducted for appointment of a neutral Arbitrator. The court will then appoint an Arbitrator, who will act under this Arbitration Provision with the same force and effect as if the parties had selected the Arbitrator by mutual agreement, or through the strike and rank method. Unless the parties agree otherwise, the JAMS Comprehensive Arbitration Rules & Procedures (“JAMS Rules”) will apply to the arbitration; however, if there is a conflict between the JAMS Rules and this Agreement, this Agreement shall govern. The JAMS Rules are available here: <http://www.jamsadr.com/rules-comprehensive-arbitration/>. The location of the arbitration proceeding will be no more than forty-five (45) miles from and in the same state where Tutor performed services covered by this Agreement, unless each party to the arbitration agrees in writing otherwise. If Tutor no longer resides or operates in the general geographical vicinity where Tutor performed services covered by this Agreement, Tutor and BookNook will agree to a location of the arbitration within forty-five (45) miles of where Tutor currently resides or operates, provided it is within the same state in which Tutor performed services covered by this Agreement and the parties cannot agree to an alternative location.

In arbitration, the Parties will have the right to conduct adequate civil discovery, bring dispositive motions, and present witnesses and evidence as needed to present their cases and defenses, and any disputes in this regard will be resolved by the Arbitrator. A party, or the Arbitrator, at a party’s request,

may subpoena witnesses or documents for discovery purposes or for the arbitration hearing.

All claims in arbitration are subject to the same statutes of limitation that would apply in court. A demand for arbitration must be in writing and delivered by hand or first-class mail to the other party within the applicable statute of limitations period. The demand for arbitration shall include identification of the Parties, a statement of the legal and factual basis of the claim(s), and a specification of the remedy sought. Any demand for arbitration by TUTOR must be delivered to 548 Market Street, PMB 98100 San Francisco, CA 94104 (ATTN: Dorsey Hopson, General Counsel) and by emailing to [dorsey@booknooklearning.com](mailto:dorsey@booknooklearning.com) and [oliver@booknooklearning.com](mailto:oliver@booknooklearning.com). The Arbitrator will resolve all disputes regarding the timeliness or propriety of the demand for arbitration. A party may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief in connection with an arbitrable controversy in accordance with applicable law, and any such application shall not be deemed incompatible with or waiver of this agreement to arbitrate. The court to which the application is made is authorized to consider the merits of the arbitrable controversy to the extent it deems necessary in making its ruling, but only to the extent permitted by applicable law. All determinations of final relief, however, will be decided in arbitration.

- 14.4 Attorney's Fees and Arbitration Costs. Each party will pay the fees for its own attorneys, subject to any remedies to which that party may later be entitled under applicable law. Costs incidental to the arbitration, including the cost of the Arbitrator and the meeting site ("Arbitration Costs"), will be borne by BookNook and Tutor equally, unless otherwise required by applicable law. Any dispute regarding a party's obligation to pay Arbitration Costs will be determined by the Arbitrator. In the event Tutor contends that, as a matter of law, Tutor is not responsible for payment of any or part of Tutor's portion of the Arbitration Costs, Tutor will have no obligation to pay that portion of the contested Arbitration Costs until, and only if, the Arbitrator determines that Tutor is responsible for those costs. If necessary for arbitration of the dispute, BookNook agrees to cover the amount of the Arbitration Costs contested by Tutor until such time as the Arbitrator determines payment responsibility. If the Arbitrator determines that Tutor is responsible for any amount of the Arbitration Costs already paid by BookNook, Tutor will remit payment of that amount to BookNook within thirty (30) days of the Arbitrator's determination, and if the arbitrator determines that BookNook is responsible for any amount of the Arbitration Costs already paid by Tutor, BookNook will remit payment of that amount to Tutor within thirty (30) days of the Arbitrator's determination.
- 14.5 Post-Arbitration Procedures. Within thirty (30) days of the close of the arbitration hearing (which period may be extended by stipulation of the Parties), any party will have the right to prepare, serve on the other party and file with the Arbitrator a post-arbitration brief. The Arbitrator may award any party any remedy to which that party is entitled under applicable law, but such remedies will be limited to those that would be available to a party in his or her or its individual capacity in a court of law for the claims presented to



and decided by the Arbitrator, and no remedies that otherwise would be available to an individual in a court of law will be forfeited by virtue of this Arbitration Provision. The Arbitrator shall apply applicable controlling law, and will issue a decision or award in writing, stating the essential findings of fact and conclusions of law. Except as may be permitted or required by law, as determined by the Arbitrator, neither a party nor an Arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of the Parties. A court of competent jurisdiction will have the authority to enter a judgment upon the award made pursuant to the arbitration.

- 14.6 Right to Consult with an Attorney; Enforcement. Tutor has the right to consult with private counsel of Tutor's choice with respect to any aspect of, or any claim that may be subject to, this Arbitration Provision. In the event any portion of this Arbitration Provision is deemed unenforceable, the remainder of this Arbitration Provision will be enforceable.

## 15. Miscellaneous.

- 15.1 Entire Agreement, Modification, and Survival. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes and replaces any previously executed agreements related to the subject matter herein. This Agreement shall not be modified, altered, changed, or amended in any respect, unless in writing and executed by both Parties, with only one exception. Specifically, BookNook reserves the right to revise the Agreement, other than the Arbitration Provision, from time to time upon thirty (30) days' written notice to Tutor, and Tutor acknowledges and agrees that by using the BookNook Platform after such revisions are made and such notice is provided, Tutor will be deemed to have consented to, and Tutor will be bound by, the revised Agreement. The Arbitration Provision may not be modified, altered, changed, or amended in any respect, unless in writing and executed by both Parties. This Agreement supersedes any prior contract between the Parties with respect to the subject matter of this Agreement. Sections 3, 7, 10, 11, 12.3, 13, and 14 of this Agreement shall survive termination of this Agreement.
- 15.2 Governing Law. Except as otherwise stated in the Arbitration Provision, which is governed by the Federal Arbitration Act, this Agreement shall be governed in order of applicability: 1) the laws of the state of California; but if not applicable, 2) the laws of the state of Delaware; but if not applicable, 3) the laws of the state in which Tutor performs the majority of services covered by this Agreement without giving effect to any conflict or choice of law rules.
- 15.3 Headings. Headings appear in this Agreement are for convenience only and do not in any way limit, amplify, modify, or otherwise affect the terms and provisions of this Agreement.
- 15.4 Notices. All notices to be delivered under this Agreement must be in writing



# BookNook Independent Contractor Agreement

and will be deemed to have been duly given (i) when received, if personally delivered; (ii) when receipt is electronically confirmed, if transmitted by facsimile or e-mail on a business day, and if such fax or e-mail is not transmitted on a business day it will be deemed to be transmitted on the next following business day; (iii) one business day after delivery to a recognized overnight delivery service for next day delivery; and (iv) upon receipt, if sent by certified or registered mail, return receipt is requested.

- 15.5 Waiver of Breach. Failure of either party to enforce strictly any provision of this Agreement shall not be construed as a waiver thereof, or as excusing the other party from future performance.
- 15.6 Assignment. This Agreement may not be assigned by either party without written consent of the other and shall be binding upon the Parties hereto, including their heirs and successors, provided, however, that BookNook may assign its rights and obligations under this Agreement to an affiliate of BookNook or any successor to its business and/or purchaser of substantially all of its assets. Tutor acknowledges and agrees that, for safety and security reasons, Tutor may not engage or hire others to teach classes arranged through the BookNook Platform on behalf of Tutor, or under Tutor's BookNook account.
- 15.7 Severability. If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.

## 16. Acceptance.

**THIS IS AN IMPORTANT LEGAL DOCUMENT THAT CREATES CONTRACTUAL RIGHTS AND OBLIGATIONS FOR BOTH TUTOR AND BOOKNOOK. TUTOR ACKNOWLEDGES AND REPRESENTS THAT TUTOR HAS READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS AGREEMENT, INCLUDING THE ARBITRATION PROVISION, AND HAS HAD SUFFICIENT TIME AND OPPORTUNITY TO CONSULT WITH FINANCIAL, TAX, AND LEGAL ADVISORS PRIOR TO ELECTRONICALLY EXECUTING THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties have signed this Agreement as of the Effective Date.

Company: **BookNook Inc**

Contractor:

By: *Kathleen Fujawa*

By:

Name: Kathleen Fujawa

Name:

Title: VP, People Operations

Title:

Address: 548 Market Street, PMB 98100  
San Francisco, CA 94104

Address:

**EXHIBIT A**

Project Description

Provided Services

- Online tutoring services
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- \_\_\_\_\_
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Compensation

- Work will be billed either:
  - Hourly at a rate of \$18/hour
- Number of hours: Up to a maximum of 30 hours/week
- Maximum total billing/week: \$540

Invoicing procedures will be provided in a separate document and be incorporated into this Agreement.