



## **Confidentiality, Inventions and Non-Solicitation Agreement**

This Agreement is made by and between Ascend Learning, LLC (“Ascend”) and the employee named on the signature page of this Agreement (“You” and “Your”). For purposes of this Agreement, references to Ascend shall include any company controlled by or under common control with Ascend (“Ascend Affiliates”), and Your obligations to Ascend in this Agreement shall apply in all respects to Ascend Affiliates.

In consideration of Your employment and continued employment with Ascend, Your access and use of Confidential Information (as defined in Section 5 below), Your access to Ascend’s customers and employees and the mutual covenants contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, You agree as follows:

**1. Duty of Loyalty.** You understand that you owe a duty of loyalty to Ascend during Your employment. As part of that duty, You agree that during Your employment: (a) You will apply Your best efforts to Your work; (b) You will not do anything that could adversely affect Ascend or Ascend’s relationship with its employees, customers, or products; (c) You will promptly inform Ascend during Your employment about any opportunity that relates to Ascend’s business; (d) You will not use such business opportunities for Your own gain or for that of any third party; (e) all opportunities You become aware of during the course of Your employment relating to the business of Ascend are owned by Ascend; (f) You will not compete with Ascend; (g) You will not solicit Ascend’s employees to leave the employ of the Company; and (h) You will not solicit Ascend’s customers or prospective customers for the benefit of another company or employer.

**2. Changes In Employment Status.**

The obligations and restrictions contained in this Agreement shall continue to apply to You regardless of whether the You are promoted, demoted, transferred or if Your job assignment changes in any way during the course of Your employment with Ascend.

**3. Non-Solicitation.**

(a) You acknowledge and agree that Ascend has invested substantial time and effort in assembling its present personnel and customer relationships. You understand and agrees that Ascend has a legitimate interest in maintaining a stable work force and protecting these relationships, as well as its customer relationships, against solicitation and/or interference by You. You understand and agree that the promises described in this Section 3 are intended to protect and preserve the legitimate business interests and goodwill of the Company.

(b) You agree that during and after Your employment with the Company, You will not use the Company’s Confidential Information (as defined in Section 5) to, directly or indirectly, contact or seek out, for a competing business, any customer or prospective customer of Ascend.

(c) You further agree that during and after Your employment with Ascend, You will not use Ascend’s Confidential Information to, directly or indirectly, solicit the employment of any person who was employed by Ascend on a full or part-time basis at any time in the year preceding the date You last performed services for Ascend.

**4. Confidentiality.**

You acknowledge You will have access to Ascend's Confidential Information during Your employment with Ascend. "Confidential Information" means confidential or proprietary information of Ascend including, but not limited to, hardware, software, documentation, technology, trade secrets, product plans, financial information, customer and supplier lists, business and technology strategies, pricing, blueprints, designs, product roadmaps, manufacturing processes, functional requirements and any other sensitive business information belonging to Ascend or belonging to a party to whom Ascend is charged with responsibility for keeping confidential. Confidential Information does not include information that You can demonstrate: (a) is in or enters the public domain through no act or fault of You; (b) was rightfully known by You prior to disclosure by Ascend and such can be shown by reasonable evidence; or (c) is lawfully obtained from a third party who has the right to make such disclosure.

All Confidential Information will remain the property of Ascend and no license or other right to such information is granted or implied hereby. All Confidential Information developed by You in connection with Your employment with Ascend shall be the sole and exclusive property of Ascend. In the event such Confidential Information developed in connection with Your employment with Ascend is deemed not to be the property of Ascend, You hereby assign all rights thereto to Ascend and hereby agree to sign all documents reasonably necessary in the opinion of Ascend to eliminate any ambiguity as to ownership by Ascend.

You represent and warrant that during and after Your separation of employment with Ascend, regardless of the reason for or manner of separation, You will use Confidential Information of Ascend solely in the performance of Your essential job duties as an employee of Ascend and will not use or disclose such Confidential Information for any other purpose, personal or otherwise, including without limitation: (a) use in Your capacity with a future employer; (b) disclosure to a future employer or an employee thereof; or (c) use of such Confidential Information in Your own business or for personal gain.

**5. Intellectual Property Rights.**

(a) Prior Developments. You have attached hereto, as Exhibit A, a list describing all inventions, original works of authorship, developments, improvements, copyrights and patents that were made or developed by You prior to the date hereof, that belong to You. If such list is not attached or is left blank, You represent that no such inventions exist. You will initial here if You are attaching an Exhibit A to this Agreement. \_\_\_\_\_

(b) No Assignment of Developments Under Labor Code §2870. You acknowledge receipt of the text of Labor Code Section 2870, attached as Exhibit A, and understand and agree that "Developments" do not include any writings, improvements, materials, information, ideas, inventions, discoveries, processes, designs, technologies, or works of authorship that You developed entirely on Your own time, without using Ascend's equipment, supplies, facilities, or trade secret information and that neither: (i) related at the time of conception or reduction to practice to Ascend's business or actual or demonstrably anticipated research or development; nor (ii) resulted from any work that You performed for Ascend. Notwithstanding any provision of this Agreement, You understand and agree that You are not being required to assign, and will not be deemed to have assigned, any of Your rights in any invention that qualifies for protection under Labor Code Section 2870.

(c) Assignment. You agree that all ideas, techniques, inventions, systems, business and marketing plans, projections and analyses, discoveries, technical information, programs, prototypes, copyrightable works of authorship, including without limitation software code, and similar developments, improvements or creations developed, conceived, created, discovered, made, or written by You in the course of or as the result of, directly or indirectly, the performance of Your employment with Ascend (hereinafter called "Developments") and all related intellectual property rights, including but not limited to, writings and other works of authorship, United States and foreign patents, maskworks, copyright and trademark registrations and other forms of intellectual property protection, shall be and remain the property of Ascend, its parents, affiliates or subsidiaries. You further agree to assign (or cause to be assigned) and

do hereby assign fully to Ascend all such Developments and any copyrights, patents, maskwork rights or other intellectual property rights relating thereto. In the event copyrightable works do not fall within the theory of works made for hire, You agree, to assign all rights, title and interest therein, without further consideration, to Ascend. You, insofar as You have the right to do so, agree that You will execute or cause to be executed such United States and foreign patents, maskworks, copyright and trademark registrations and other documents and agreements and take such other action as may be desirable in the opinion of Ascend to enable intellectual property, copyright and other forms of protection for Developments to be obtained, maintained, renewed, preserved and protected throughout the world by or on behalf of Ascend.

If Ascend is unable, after exercising reasonable efforts, to secure Your signature on any application for patent, copyright, analogous registration, or other documents regarding any legal protection regarding Developments or other works and inventions, whether because of Your physical or mental incapacity or for any other reason, You hereby irrevocably designate and appoint Ascend and its duly authorized officers and agents as Your agent and attorney-in-fact to act for and on Your behalf and to execute and file any such application or applications or other documents and to do all other lawfully permitted acts to further the prosecution and issuance of such patent, copyright or trademark registrations or any other legal protection thereon with the same legal force and effect as if executed by You.

(d) Incorporation into Ascend Products. You agree that if in the course of Your employment with Ascend, You incorporate into any Development or into any other invention, service, or product of Ascend any invention, improvement, development, concept, discovery or other proprietary information owned by You or in which You have an interest, (i) You will inform Ascend, in writing, before incorporating such invention, improvement, development, concept, discovery or other proprietary information into any Development or into any other invention, service, or product; and (ii) Ascend is hereby granted and will have a nonexclusive, royalty-free, perpetual, irrevocable, worldwide license to make, have made, modify, use and sell such item as part of or in connection with such invention, services, or Development. You will not incorporate any invention, improvement, development, concept, discovery or other proprietary information owned by any third party into any invention without Ascend's prior written permission.

(e) Subsequent Use Restrictions. During the course of employment and for a period of one (1) year following the separation of Your employment, You agree to promptly notify Ascend of any inventions You develop after such termination that are based on, relate to or are a derivative of Developments or Confidential Information. You agree that, to the fullest extent permitted by law, any invention or work involving You after separation of Your employment shall be deemed to result from access to Ascend's Developments or Confidential Information (including without limitation patentable inventions and copyrightable works) if such invention or work arose from Your work with Ascend.

## **6. Return of Property.**

Except for those items set forth in Exhibit A, upon the termination of Your relationship with Ascend or promptly upon Ascend's request, You will deliver to Ascend all equipment and Confidential Information, including but not limited to documents, books, computers, computer software, notebooks, records, reports, notes, memoranda, drawings, sketches, models, maps, contracts, lists, computer disks (and other computer-generated files and data), any other data and records of any kind, and copies thereof (collectively, "Company Property"), created on any medium and furnished to, obtained by, or prepared by You in the course of or incident to Your employment with Ascend. You agree not to delete any Company Property at the time of or in contemplation of Your termination of employment. You further agree to sign a statement verifying that You have returned all such Company Property upon your termination of employment.

## **7. No Use of Other Confidential Information.**

You represent and warrant You will not use in Your work for Ascend, nor will You bring on to Ascend's premises, confidential information, inventions, or other intellectual property that belong to any of Your former employers. You further represent and warrant that Your employment with Ascend will not violate any agreements, including non-competition and/or non-solicitation agreements, with former

employers or otherwise violate any obligations You owe to former employers. You shall indemnify and hold Ascend harmless for any damages incurred by Ascend resulting from a breach of the warranties contained in this Section or any of Your obligations to Ascend under this Agreement.

**8. Remedies.**

You understand, acknowledge and agree that in the event of a breach or threatened breach of any of the covenants and promises contained in this Agreement, Ascend shall suffer irreparable injury for which there is no adequate remedy at law. Accordingly, Ascend will be entitled to, in addition to any and all remedies of law, the right to an injunction, specific performance or other equitable relief. All remedies herein are cumulative and not exclusive.

**9. Waiver of Breach.**

All waivers must be in writing duly executed by the party providing such waiver. The parties agree emails are not sufficient to constitute a “writing” within the meaning of this Section.

**10. Severability.**

If any of the provisions of this Agreement are determined to be invalid, illegal, or unenforceable, such provisions will be severed from the Agreement, and the remainder of this Agreement will be valid and enforceable to the extent permitted by applicable law, provided that the intent of the parties is not materially impaired.

**11. Assignment.**

This Agreement shall be binding upon and inure to the benefit of Ascend and its successors and assigns. You may not assign this Agreement, or any of Your rights or obligations hereunder, to any third party. Ascend shall have the right to assign this Agreement to a successor to all or substantially all of the business or assets of Ascend or any division or part of Ascend with which You are employed at any time.

**12. Entire Agreement and Modification.**

This Agreement constitutes the entire agreement and understanding between Ascend and You concerning the subject matters contained herein. This Agreement supersedes any and all prior understandings and agreements between the parties concerning these subject matters. This Agreement may not be modified, terminated, waived, altered or amended except in a writing signed by You and a duly authorized officer of Ascend. The obligations, rights, and liabilities set forth herein shall survive termination and/or separation of Your employment with Ascend regardless of the reason for or manner of separation.

**13. Choice of Law and Forum.**

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without giving effect to the principles of conflicts of laws thereof. You agree that the State and/or Federal courts located in the State of California, County of Santa Clara, shall have non-exclusive jurisdiction over any and all disputes arising from this Agreement and You waive any use of the argument of *forum non-conveniens* alleging that such venue and/or forums are overly burdensome for You.

**14. Employment at Will.**

**THIS AGREEMENT DOES NOT GUARANTEE CONTINUATION OF EMPLOYMENT FOR ANY PERIOD AFTER THE DATE IT IS EXECUTED; YOU RESERVE THE RIGHT TO TERMINATE EMPLOYMENT AT ANY TIME FOR ANY OR NO REASON; AND ASCEND RESERVES THE RIGHT TO TERMINATE YOUR EMPLOYMENT AT ANY TIME FOR ANY OR NO REASON.**

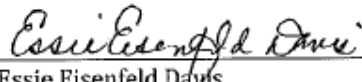
15. Waiver of Jury Trial.

**YOU AND THE COMPANY KNOWINGLY AND WILLINGLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

**THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THIS AGREEMENT, THAT THEY HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL IF THEY SO CHOSE, AND THAT THEY ENTER INTO THIS AGREEMENT FREELY AND VOLUNTARILY.**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date set forth below.

**ASCEND LEARNING, LLC**

  
\_\_\_\_\_  
Essie Eisenfeld Davis  
Senior Vice President, Human Resources

**EMPLOYEE:**

\_\_\_\_\_  
Your Signature

\_\_\_\_\_  
Print Your Name

\_\_\_\_\_  
Date

**Exhibit A**

ASCEND'S WRITTEN NOTIFICATION  
TO EMPLOYEE OF  
LABOR CODE § 2870

In accordance with California Labor Code section 2870, you are notified that your CONFIDENTIALITY, INVENTIONS AND NON-SOLICITATION AGREEMENT does not require you to assign to Ascend Learning, LLC any invention for which no equipment, supplies, facility or trade secret information of the company were used and that were developed entirely on your own time, and does not relate to the business of Ascend or to Ascend's demonstrably anticipated research or development, or does not result from any work performed by you for the company.

The following is the text of California Labor Code section 2870:

“(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.”