

# Consulting Agreement

This Consulting Agreement, dated effective \_\_\_\_\_, 201\_\_ (this "Agreement") is made and entered into by and among John J. Hogan d/b/a Bridge-it Educational Services (BES), and \_\_\_\_\_ (Consultant).

## ARTICLE 1

### SCOPE OF WORK

- 1.1 Services.** BES has engaged Consultant to provide services in connection with the contract(s) between BES and BOCES and/or School Districts or Bloomboard or other service providers to conduct the classroom observation component of the Annual Professional Performance Review (APPR), or other work as assigned as an independent contractor (micro-credentials). Consultant will do classroom observations using the Rubric negotiated between the District and Union representing the teachers or evaluate micro-credentials submitted by client.
- 1.2 Time and Availability.** Consultant shall have discretion in selecting the dates and time he/she performs such consulting services using video recording or other data provided.
- 1.3 Standard of Conduct.** In rendering consulting services under this Agreement, Consultant shall conform to high professional standards of work and ethics, and use integrity and prudent judgment in performing all services under this Agreement and in handling any confidential information, as described in Article 5, herein.
- 1.4 Outside Services.** Consultant shall not use the service of any other person, entity or organization in the performance of Consultant's duties without the prior written consent of BES. Should BES consent to the use by Consultant of the services of any other person, entity or organization, such use shall be at consultant's own expense, and no information regarding the services to be performed under this Agreement shall be disclosed to that person, entity or organization until such person, entity or organization has executed an agreement to protect the confidential information of the person being observed, as defined in Article 5, herein.

## ARTICLE 2

### INDEPENDENT CONTRACTOR

- 2.1 Independent Contractor.** Consultant is an independent contractor and is not an employee, partner, or co-venture of, or in any other service relationship with BES. The manner in which Consultant's services are rendered shall be within Consultant's sole control and discretion.

Consultant is not authorized to speak for, represent, or obligate BES in any manner without the prior express written authorization from BES.

**2.2 Taxes.** Consultant understands that he/she is responsible to pay for all taxes arising from compensation and other amounts paid under this Agreement. Neither federal, nor state, nor local income tax, nor payroll tax of any kind, shall be withheld or paid by BES on behalf of Consultant. Consultant understands that he/she is responsible to pay, according to law, Consultant's taxes. BES will issue a 1099 form to consultant.

**2.3 Benefits.** Consultant will not be eligible for, and shall not participate in, any employee pension, health, welfare, or other fringe benefit plan of BES.

## **ARTICLE 3**

### **COMPENSATION FOR CONSULTING SERVICES**

#### **3.1 Compensation.**

BES shall pay Consultant the fees listed in Attachment #1. The compensation shall be paid within 45 days of providing service.

**3.2 Reimbursement.** Consultant shall be solely responsible for, and BES will not reimburse Consultant for any "out-of-pocket" expenditures, which are related to the consulting service. These expenditures include, but are not limited to, expenses related to travel (i.e. airfare, hotel, temporary housing, meals, parking, taxis, mileage, etc.), telephone calls, and postal expenditures.

## **ARTICLE 4**

### **TERM AND TERMINATION**

**4.1 Term.** This Agreement shall be effective as stated above, and shall continue in full force and effect for 24 consecutive months. BES and Consultant may negotiate to extend the term of this Agreement and the terms and conditions under which the relationship shall continue.

**4.2 Termination.** BES may terminate this Agreement for "Cause", after giving Consultant written notice of the reason. Cause means: (1) Consultant has breached the provisions of Article 5 or 6 of this agreement in any respect, or materially breached any other provision of this Agreement and the breach continues for 30 days following receipt of a notice from BES:

(2) Consultant has committed fraud in connection with BES's business; (3) Consultant has been convicted of a felony, or (4) Consultant's use of narcotics, liquor or illicit drugs has a detrimental effect on the performance of employment responsibilities, as determined by BES.

**4.3 Survival.** The provisions of Articles 5 and 6 of this Agreement shall remain in full force and effect thereafter.

## **ARTICLE 5**

### **CONFIDENTIAL INFORMATION**

**5.1 Obligation of Confidentiality.** In performing consulting services under this Agreement, Consultant may be exposed to and will be required to use certain "Confidential Information" of BES, BOCES or School Districts or Bloomboard. Consultant agrees that Consultant will not use, directly or indirectly, such Confidential Information for the benefit of any person, entity, or organization other than BES, or disclose such Confidential Information without the written authorization of BES, either during or after the term of this Agreement, for as long as such information retains the characteristics of Confidential Information.

**5.2 Definition.** "Confidential Information" means information, not generally known, and proprietary to BES, BOCES, School Districts or Bloomboard for whom work is being performed. All information which Consultant acquires or becomes acquainted with during the period of this Agreement, whether developed by Consultant or by others, which Consultant has a reasonable basis to believe to be Confidential Information, or which is treated by BES, BOCES, School District's or Bloomboard as being confidential Information, shall be presumed to be confidential Information.

## **ARTICLE 6**

### **CONFLICT OF INTEREST AND NON-SOLICITATION**

**6.1 Conflict of Interest.** Consultant covenants and agrees not to consult or provide any services in any manner or capacity to a direct competitor of BES during the duration of this Agreement

unless express written authorization to do so is given by BES. A direct competitor of BES for purposes of this Agreement is defined as any individual, partnership, corporation and/or other business entity that engages in evaluation/observation/appeals of a teacher.

**6.2 Non-Solicitation.** Consultant covenants and agrees that during the term of this Agreement, Consultant will not, directly or indirectly, through an existing corporation, unincorporated business, affiliated party, successor employer, or otherwise, solicit, hire for employment or work with, on a part-time, consulting or any other basis, other than on behalf of BES any employees or independent contractor employees by BES while Consultant is performing services for BES.

**6.3 Employee Non-Compete Agreement.** Consultants agree not to directly or indirectly compete with the business of BES during a period of two years following the termination of the Agreement. The term “non-compete” as used herein shall mean the Consultant shall not own, manage, operate, consult or to be employed by a school district or BOCES or a business substantially similar to or competitive with the present business of BES or such other business activity in which BES may substantially engage during the term of this Agreement.

## **ARTICLE 7**

### **GENERAL PROVISIONS**

**7.1 Construction of Terms.** If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, that provision shall be severed and shall not affect the validity or enforceability of the remaining provisions.

**7.2 Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

**7.3 Complete Agreement.** This Agreement constitutes the complete agreement and sets forth the entire understanding and agreement of the parties as to the subject matter of this Agreement and supersedes all prior discussions and understandings in respect to the subject of this Agreement, whether written or oral.

**7.4 Dispute Resolution.** If there is any dispute or controversy between the parties arising out of or relating to this Agreement, the parties agree that such dispute or controversy will be arbitrated in accordance with proceedings under American Arbitration Association rules, and such arbitration will be the exclusive dispute resolution method under this Agreement. The decision and award determined by such arbitration will be final and binding upon both parties. All costs and expenses, including reasonable attorney’s fees and expert’s fees, of all parties

incurred in any dispute which is determined and/or settled by arbitration pursuant to this Agreement will be borne by the party determined to be liable in respect of such dispute: provided, however, that if complete liability is not assessed against only one party, the parties will share the total costs in proportion to their respective amounts of liability so determined. Except where clearly prevented by the area in dispute, both parties agree to continuing performing their respective obligations under this Agreement until the dispute is resolved.

**7.5 Modification.** No modification, termination or attempted waiver of this Agreement, or any provision thereof, shall be valid unless in writing signed by the party against whom the same is sought to be enforced.

**7.6 Waiver of Breach.** The waiver by a party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any other subsequent breach by the party in breach.

**7.7 Successors and Assigns.** This Agreement may not be assigned by either party without the prior written consent of the other party: provided, however, that the Agreement shall be assignable by BES, without Consultant's consent in the event BES is acquired or merged into another corporation or business entity. The benefits and obligations of this Agreement shall be binding upon and inure to the parties hereto, their successors and assigns.

**7.8 No Conflict.** Consultant warrants that Consultant has not previously assumed any obligation inconsistent with those undertaken by Consultant under this Agreement.

**IN WITNESS WHEREOF,** this Agreement is executed as of the date set forth above.

**Bridge-it Educational Services**

**Consultant**

By: \_\_\_\_\_

By: \_\_\_\_\_

## **Article #1**

Classroom observation using video analysis	\$200.00 per observation
Teacher Candidate Marketing Video	\$75.00 per observation
Micro-credential video analysis	\$200.00 per set of 10 evaluations