STATEMENT OF WORK

Statement of Work for Year(s): Services for period starting **July 1, 2016**

Client: **Foothill College**

Provider: Etudes, Inc.
274 Redwood Shores Pkwy #335
Redwood City, CA 94065
(650) 504-8589

SECTION I: Project Background

1. TERM OF STATEMENT OF WORK

The term associated with the annual hosting, system administration, site and account management, and support costs is July 1, 2016 through _June 30, 2017___ (fiscal year/s) for services to be provided to Client.

2. COSTS

The Client agrees to pay Etudes, Inc. for services according to the terms of this Statement of Work (SOW) pursuant to the following items and payment date:

Total	$ 129,000_____	Due Date: _July 1, 2016_____
Hosting Services	$_ 60,000_____	
Support Services	$_ 60,000_____	
Member Fee	$_ 5,000_____	
Project sites	$_ 4,000_____	

3. OBJECTIVE

This SOW includes hosting, support, and system administration services. Specifically, Etudes will provide hosting, backup services, system administration, live and development site installations, account management, faculty support, student help, and routine term roster importation for Client.

4. CLIENT INSTITUTION KEY CONTACTS (NAME, PHONE, EMAIL)

Primary Contact	*Name*	Judy Baker
	Email address	bakerjudy@fhda.edu
	Phone number	650-949-7388
Distance Learning	*Name*	Judy Baker
	Email address	bakerjudy@fhda.edu
	Phone number	650-949-7388
IT Lead for SIS	*Name*	Jerrick Woo
	Email address	woojerrick@fhda.edu
	Phone number	650-949-7030

5. INFRASTRUCTURE, SERVICES, AND RELATED POLICIES

1. Hosting

Etudes will work with its preferred Commercial Data Center / Hosting Providers to provide a fully hosted and managed solution of the Etudes application. The hosting solution will include all hardware, operating system software, the Etudes application and its components, networking connectivity and back-ups. Etudes will also ensure that it has full redundancy for its service.

As part of the dedicated hosting, Etudes will ensure that its Data Center hosting provider will have on-site spares for servers; therefore, in the event of a hardware failure on the database server, application servers, or file-system, Etudes will ensure that its hosting provider will replace any failed hardware components, or the entire system. Etudes will ensure that any downtime to the database due to a hardware failure is limited – with no additional costs to the Client.

2. Additional Features

- Uptime: 99.8%
- Monitoring: 24/7/365
- Hardware: Included
- Operating Systems: Included
- Application Deployments & Upgrades: Included
- Load Balancing: Included
- Redundancy: Included
- No storage limit in sites
- Account Setup: Included
- Site Installations: Included
- Faculty Support: Included

- Basic Student Help: Included

3. **Production**

Etudes staff will deploy, upgrade, maintain the Etudes application and database servers. Deployments, server maintenance, and upgrades will be scheduled during off hours, typically early in the morning. This includes small feature releases, as well as maintenance and bug fixes. Major version upgrades will be scheduled during term breaks with advance notice to members.

4. **Administrative Access**

Etudes staff has full administrative access to all servers except the firewall and the load balancer. These are "managed services" that are managed by the hosting provider, and data center staff.

5. **Monitoring**

All monitoring tools are accessible to Etudes staff twenty-four hours a day, seven days a week (24/7). Etudes staff, System and Database Administrator, has access to monitor the following to ensure optimal system performance:

- Bandwidth Traffic
- Hardware Resources (CPU Monitoring, Drive Space monitoring, RAM utilization)
- Applications via various ports, etc.

6. **Backup Restoration**

In the event of a disaster and backup restoration, the hosting service agreement includes (at no additional cost to Client), a restore of the entire database and file-system from the latest backup.

7. **Data Retention**

Etudes, Inc. agrees to keep course sites "live" (reachable via web browsers) on the Etudes production services for a full year. The course sites remain accessible for a full year intact, with all content published or uploaded by faculty, student grades, rosters, student assessment uploaded or inline submissions, private messages, discussion posts and other communication records submitted into Etudes by students and instructors. At any given time, a full year's worth of course sites are "live" on the Etudes servers, with all their content, unless deleted by faculty.

Records prior to one year are purged from the Etudes servers to reduce storage costs and eliminate load, stability and performance issues that can be caused by excessive data.

Etudes, Inc. archives and stores on its servers two additional years of course sites at no cost to Client. Archived courses are stored in a manner that allows instructors to import the content back into future development or live term sites. "Import from Archives" is available under "Site Info" on the Etudes platform. Archived course sites include uploaded and published faculty content – not student records.

The above policy does not apply to development and project sites, which remain "live." Development and project sites never get purged. They may be used as 'master' copies.

8. Support

Etudes staff has full access to engineers 24/7 to respond to crises related to performance, database or load balancer issues, data corruption, or equipment failure.

Support does not suffer regardless of what time of the day or day of the week. Staff is available around the clock, notified by monitoring devices, and can take care of any issue. Support issues are addressed immediately depending on their priority.

Additionally, Data Center Network Operations staff and Load Balancer engineers can be reached by Etudes technical staff 24/7 to address issues.

6. RESOURCES TO BE PROVIDED BY CLIENT INSTITUTION & PROVIDER RESPONSIBILITIES

The Client shall cooperate with Etudes staff by making available resources (IT and support staff) and data (roster batch files, site requests, etc.), so that Etudes staff may perform its obligations under this Statement of Work. The Client shall dedicate one or more points-of-contact.

The Client shall cooperate with Etudes by making sure that its users participate in the required training prior to gaining access to hosting and support services. Accounts from individuals with no verified completion of training will be removed from the system, sites, and user support forums.

The Client shall notify Etudes of employees whose faculty, administrative, or classified contracts with the Client have been terminated and they no longer qualify for Etudes hosting and services.

The Client shall provide resources and support to its users to supplement what is provided by Etudes to ensure that quality instruction is offered to all users of the system.

The Client understands that Etudes will provide “reasonable” student help desk assistance, free of charge, to Client in troubleshooting and resolving login and account issues, browser glitches, and the like. If student help inquiries are greater than average, Client is expected to also provide support.

The Client is solely responsible for:

- Appropriateness and quality of content published in sites by their faculty, students, and staff; ADA / Section 508 and copyright law compliance of the materials uploaded by its users; quality of instructional programs, suitability of methods of instruction and collaboration, and related matters.

Etudes, Inc. is responsible for:

- The application and infrastructure; not for the quality or nature of content uploaded or published into Etudes by users or the accessibility of the content published by users of the Client. Clients are responsible for the content of course and project sites, the quality, and accessibility.

Etudes, Inc. warrants that the products made available under this SOW fully comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d) and its implementing regulations set fort at 36 C.F.R., part 1194. Etudes, Inc. agrees to promptly respond to and resolve any complaint regarding accessibility of its software products that is brought to its attention.

Etudes, Inc. further agrees to indemnify and hold harmless and pay any reasonable attorney’s fees on behalf of Etudes, Inc., as a result of any claim arising from Etudes, Inc.'s failure to comply with the aforesaid requirements: the Client Institution entering this agreement, the Chancellor's Office of the California Community Colleges and any client institution. Failure to comply with these requirements shall constitute a breach and shall be grounds for termination of this SOW.

7. USER LIMITATION

Client shall only permit Authorized Users to utilize Etudes (the “Software”) or to view materials residing on the course or project sites installed on the servers. Client also agrees that each Authorized User of the Software shall have a unique account and that no users shall share the same account.

Additional terms of use of accounts and sites include the following:

a. ‘Guest’ accounts (where a user’s email address is added and assigned the role of ‘guest’ or ‘student’) may be provided for limited use to view a course from a student perspective, as well as for ‘visitors,’ such as lecturers, visiting professors, and colleagues, and for supervisors.

b. “Guest” accounts with ‘guest’ or ‘student’ role should not be established for students. Only registered students, as per Registrar’s data, shall receive Authorized User accounts and be permitted to sites. Accounts must be established through standard roster upload processes.

c. For “guest” accounts, Etudes allows up to four (4) guests or visitors per site.

d. Under no circumstances should development (DEV) sites be used for teaching. No guest or user accounts shall be added in DEV sites. Only four (4) guests are permitted in a DEV site. Failure to comply with these terms of this SOW will result in the immediate removal of the accounts from Etudes. Further violations by the same individuals will result in termination of their accounts and sites.

e. The limitation of four (4) guest or visitor accounts per site does not apply to project sites.

f. Sites should be kept to a reasonable membership size for optimal performance and stability. Sites may not exceed 250 students, without prior written permission and special services agreements.

g. Guest accounts shall be included in the total enrollments counted, if they exceed the allowed limit.

8. ETUDES CODE OF CONDUCT POLICY

The evaluation, control, and management of the quality and methods of instruction, appropriateness and presentation of content, academic dishonesty, and compliance with acceptable code of conduct within courses and project sites is the sole responsibility of the Client and fall under their policies. Sanctions and consequences for infractions shall be addressed by instructors and institutions under their local policies.

Etudes expects users' conduct in online course and project sites to conform to acceptable standards as described here. Unacceptable behavior includes, but is not limited to the following:

a. Use of threatening, harassing, sexually explicit language or discriminatory language or conduct that violates state and federal law on sexual harassment or discrimination;

b. Unauthorized posting or transmitting sexually explicit images or other content that is deemed by Etudes, the software provider, or any administrator, supervisor or instructor of a course published utilizing Etudes or other online tools to be offensive;

c. Conduct that constitutes fraudulent behavior as enumerated in state and federal statutes;

d. Disruptive behavior on-line;

e. Spamming site participants with posts and private messages unrelated to coursework.

f. Unauthorized access to another user's private My Workspace, account, or sites.

g. Any action that shows disrespect for individual and privacy rights of other site participants.

All users are subject to the same consequences for violations of the Etudes Code of Conduct policy.

First-time violators of appropriate conduct will receive a warning letter and may be suspended from access to the system or their sites. Subsequent incidents will be reported to their institution's administration for appropriate action, as per local policies and procedures. Depending on the severity of the offense, Etudes reserves the right to block users from the system or remove their accounts, temporarily or permanently.
Etudes will collaborate with senior administrative staff of Client and will provide data for Court hearings.

9. ETUDES PRIVACY STATEMENT

Etudes, Inc. is committed to protecting the privacy of all students using our Learning Management System. This Privacy Statement describes what information is collected on the Etudes servers, how the information is protected, who has access to the information, and how the information might be used. The statement is in accordance with the U.S. Family Education Rights and Privacy Act of 1974 (FERPA).

When students enroll in a course that uses Etudes, username and password are generated by the client institution's administrative software for each student. The assigned password is a default password. Students are to change their password after the initial log in. Student log in information will be linked to his/her campus student identification. The first and last names are visible to the instructor and students in many areas of Etudes,

such as in Discussions, Chat, Member Listing, etc. Instructors also see student id's in certain areas of Etudes for disambiguation of names when more than one student in a class has the same name.

The username is only visible by system administrators and technical support personnel.

Since Etudes is password-protected, the only students who have access to a course are those who are officially enrolled in the course. However, as Etudes identifies students with the name, as per Registrar's Data, they will not see their classmates' student id's or usernames.

Students have the ability to change their passwords whenever they choose in Etudes. Also, students have access to past courses until the courses are either deleted off the server, or the instructor disables access, which is standard practice at the end of each term.

After students log into Etudes and access their course, much of their activity will be tracked. For example, instructors can see how many times students entered the class, when they last visited the class, how many modules they completed, if they accepted the syllabus, etc.

The work that students submit to Etudes will remain in the course until the course is deleted from the server. The server is hosted and maintained by Etudes, Inc. Etudes performs daily data backups. Additionally Etudes regularly monitors the system for any unauthorized activity.

Limited access to courses will be granted from time-to-time to other individuals, such as visitors, guest speakers or course evaluators. In either instance, it is the instructors' responsibility to give students advanced notice. Guest speakers will have access to the course until the instructor removes the speaker or evaluator from the course.
Students should not post private information, such as phone numbers, into Discussions or Chat Room. Additionally to ensure privacy, students are to follow the policies below:

Students are to never allow anyone to log in using their username and password. After logging in, students are not to give anyone access to their course. The system authenticates each student as an enrolled student in an Etudes course through a secure log in process. Each password is encrypted by Etudes, and the log in page is secured by SSL technology. However, in order to maintain the integrity of student privacy, and academic integrity, students must ensure that all work completed in their courses are completed by themselves. Academic Honesty Policies are established and enforced at the campus level, not Etudes.

All students are required to change their initial password. They cannot enter course sites until they do so.

Each time students finish using Etudes, they are to click on "Log out" and exit out of the web browser. Closing the web browser is important if students share a computer or are using a computer in a lab.

Instructors may seek student permission to post examples of exemplary course work in future course. If so, the instructor will delete the students' name from the examples. No information in Etudes or answers to online surveys will be used for anything other than client college purposes. No information will be sold to, or shared with, third-party entities. Depending upon changes in technology and institutional policies of our member client institutions, Etudes, Inc. reserves the right update and revise this Etudes Privacy Statement.

10. ETUDES LEAD STAFF

The Key Person(s) who will perform the Services set forth in this Work Statement.

Executive Director	*Name*	Vivie Sinou
	Email address	sinou@etudes.org
	Telephone number	650.218.7456
Chief Architect	*Name*	Glenn Golden
	Email address	ggolden@etudes.org
	Telephone number	734.355.1670
Senior Java Software Developer	*Name*	Murthy Tanniru
	Email address	murthy@etudes.org
	Telephone number	510.282.5879

11. WARRANT AND SUPPORT

Etudes, Inc. guarantees that software upgrades and releases are stable and reliable. Every effort will be made to ensure that the software is robust, production-quality and operates at a HIGH standard of performance.

While Etudes uses industry standard practices to protect the security and confidentiality of student and instructor data, it is not responsible for any data lost due to catastrophe or exposed due to illegal data theft.

Etudes staff will respond to user support inquiries within 24 hours, including weekends and holidays. Users must post support tickets in the Users Group forums. In case of unreachable Etudes servers, Client may contact directly the Executive Director, Vivie Sinou, at sinou@etudes.org or 650.218.7456 (cell).

12. ASSUMPTIONS

a. Etudes, Inc. may sub-contract the hosting portions of this contract to another Data Center or preferred hosting provider, and will not notify the client if a shift has been made.

b. Etudes, Inc. guarantees that a shift to a new Data Center facility will be transparent to client.

c. Etudes guarantees to provide advanced notice to users for major system upgrades.

d. Etudes may provide project sites to Client for special needs, collaboration and training purposes.

e. Local or online training services are at additional cost. Training services are not part of this SOW.

f. Modest annual increases of 3-5 % in costs of services may be necessary to support the operation.

SECTION II: EXPENSES & PAYMENTS

13. REIMBURSABLE EXPENSES

No travel expenses are anticipated with this SOW. If they become necessary, all reasonable and necessary travel expenses incurred by Etudes employees, contractors and agents in connection with performance of the Etudes' obligations hereunder shall be payable by the Client upon receipt of Etudes' invoice containing such expenses, such as visits for training at local campuses, in an amount not to exceed $5,000.

Etudes, Inc. agrees to coach air travel, lodging at mutually agreed upon facilities, and compact car rental, if available. Etudes will only travel for Client's services at the written request and pre-approval of the Client.

14. INVOICING

1. **<u>Invoices</u>**

An invoice will be sent to Client institution for the services outlined in this SOW. The invoice shall list the hosting and system administration costs as quoted to the Client for the fiscal year, and it shall be based on the number of enrollments (also referred to as 'seats') served by Etudes. "Seats" refers to the total number of official students that exist in all of a client's Etudes sites in a term.

A client's hosting level is estimated from the highest enrollment term during the previous fiscal year. Official student enrollments in each Etudes site are counted. Student enrollments refer to the official registrations that are loaded automatically onto Etudes, daily, by the client's IT staff. Duplicated head count is included in the total number of enrollments served by Etudes. For example, if a student is enrolled in three Etudes course sites, the student is counted three times. This reflects three enrollments (or three seats).

The Client may request detailed reports from Etudes, Inc. with a breakdown of enrollments per site/term.

Guest accounts (manually-added users) are not included in the total enrollments of a client, unless the allowable limit has been exceeded excessively. Please refer to Section 7 (g) of the Statement of Work.

In the event that the Client questions the amounts charged on an invoice, the Client must communicate those questions to Etudes within five (5) business days of the Client's receipt of such invoice.

2. **Payment**

Payment is due and payable on the first day of the new fiscal year (July 1) in which the services listed in this SOW begin and no later than sixty (60) days after the start of the fiscal year.

If payment is not received sixty (60) days from the onset of services (August 30), late notices will be issued to Client and a twenty-percent (20%) late penalty will be applied to their annual cost of hosting and support services.

Failure to receive payment within ninety (90) days from the start of academic year (September 30), a termination notice will be issued, after which Client's membership and access to hosting and support services will be terminated. Courses archived will be exported for a departed Client, upon request, at a cost of $5,000 per year of exported archives.

15. TERMINATION OF STATEMENT OF WORK

1. **Automatic Termination**

The occurrence of any of the following shall constitute a material default under this SOW:

a. The failure to make a required payment when due.

b. The insolvency or bankruptcy of either party.

c. The death of one or more key Etudes staff.

d. The subjection of any of either party's property to any levy, seizure, general assessment for the benefit of creditors, application or sale for or by any creditor or government agency.

e. The failure to make available or delivery the services in the time and manner provided for in this SOW.

f. The failure to make agreed-upon payments in the time and manner provided for in this SOW.

2. **Early Termination**

Unless otherwise terminated in accordance with the above terms, this SOW will be in effect for one year. In the event that Client terminates this SOW within one (1) year from the date of approval or this SOW is terminated by us prior to the expiration of the initial term due to an Event of Default, Etudes will suffer a substantial injury for which it is impracticable or extremely difficult to fix actual damages. In an effort to liquidate in advance the sum that should represent such damages, Client agrees to pay Etudes an "Early Cancellation Fee" of the greater of: (a) the average monthly fee paid by the Client for Etudes services over the previous 12 months (or such shorter time if the Client has been under contract with Etudes for less than 12 months) multiplied by the remaining months of the SOW, or (b) 75% of the remaining payments under the terms of this SOW, whichever is greater.

3. **Termination by Etudes for Failure to Make Agreed-Upon Payments**

Should Client fail to pay Etudes for hosting and support services provided within the specified timeframe, Etudes shall terminate this SOW and remove the client's access to the Etudes system at the end of the term. This termination shall be considered Early Termination by the Client subject to the terms above.

16. ARBITRATION OF DISPUTES

Any dispute or controversy arising out of or in connection with this SOW, including the right to an injunction, shall be determined and settled by arbitration in accordance with the rules of the JAMS, by an arbitrator selected by JAMS, and arbitration shall be a condition precedent to the commencement of any court action based on a dispute or controversy in connection with this SOW. The arbitration shall be held in the State of California or at any other location that is agreed upon by both parties. Any award rendered thereby shall be final and binding on each and all parties, and the prevailing party shall be entitled to all costs and reasonable attorneys' fees of such arbitration as well as any subsequent appeal and/or enforcement and collection action.

17. ATTORNEY'S FEES

In the event of any litigation arising from or related to this SOW or the service provided under this SOW, notwithstanding the above Arbitration provision, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorney's fees, and all other related expenses incurred in such litigation. In the event of a non-adjudicative settlement of litigation between the parties or a resolution of a dispute by arbitration, the term "prevailing party" shall be determined by that process.

18. ENTIRE AGREEMENT

This SOW contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this SOW will be binding on the parties.

19. MODIFICATION BY SUBSEQUENT AGREEMENT

This SOW may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them, or an oral agreement only to the extent that the parties carry it out.

20. WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this SOW shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this SOW.

21. SEVERABILITY

If any provision of this SOW is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire SOW will be severable and remain in effect.

22. GOVERNING LAW

This SOW shall be construed in accordance with the laws of the State of California.

SECTION III: ACCEPTANCE SIGNATURES

IN WITNESS WHEREOF, each party has caused this SOW to be executed as of the Effective Date set forth below

Etudes, Inc. Executive Director	**Client Chief Financial Officer/Administrator**
By:_____	By:_____
Printed: _____	Printed: _____
Title: _____	Title: _____
Effective Date: _____	Effective Date: _____