

## INTERNATIONAL STUDENT RECRUITMENT SERVICES AGREEMENT

This International Student Recruitment Agreement (“**Agreement**”) is entered into and signed by and between Huatong Xinnuo Int’l Cultural Exchange Center Limited (“**Contractor**”), an international student recruitment corporation in China whose address is Unit3A, 12/F, Kaiser Centre, No.18 Centre streetm Sai Ying Pun, Hong Kong( head office is 12<sup>th</sup> floor, Canxing Building, No. 158 Longqi Road, Shanghai, 200232, China) and the State University of New York, an educational corporation existing under the laws of the State of New York and having its office and principal place of business located at H. Carl McCall SUNY Building, 353 Broadway, Albany, New York 12246, by and on behalf of Stony Brook University (“**University**”), whose address is 100 Nicolls Road, Stony Brook, New York, United States of America (“**U.S.**” or “**United States**”), on the Effective Date set out below. Contractor and University shall individually be referred to as a “**Party**” and collectively as the “**Parties.**”

<b>Effective Date:</b>	March 1, 2024
<b>Initial Term:</b>	Three (3) years from the Effective Date ( <b>Section 2.2</b> )

### RECITALS

**WHEREAS**, University wishes to recruit International Students from the Territory (as defined below) for enrollment at the University;

**WHEREAS**, Contractor wishes to provides Services (as defined below) to assist in the promotion and recruitment of International Students to foreign educational institutions;

**WHEREAS**, Contractor has agreed to provide such Services pursuant to the terms and conditions of this Agreement;

**WHEREAS**, each Party acts exclusively in its own name on its own behalf with respect to the rights and obligations pursuant to this Agreement;

**NOW THEREFORE**, University and Contractor, in consideration of the foregoing and the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

#### 1. **DEFINITIONS; INTERPRETATION; PURPOSE**

- 1.1. "**Academic Year**" means two (2) semesters. Standard Fall semester start dates are in August and Spring semester start dates are in January of an Academic Year. For Contractor Fee purposes, Academic Year means two (2) consecutive semesters, which can be either Fall and Spring or Spring and Fall. Intersessions do not qualify.

- 1.2. **“Academic Programs”** means the Full-time registered undergraduate and graduate programs offered by University and made available to International Students.
- 1.3. **“Confidential Information”** means any and all information of University or Contractor (the **“Disclosing Party”**) or any of their licensors, customers, employees or other service providers that has come or will come into the possession or knowledge of the other Party (the **“Receiving Party”**) in connection with or as a result of entering into this Agreement or provision or receipt of Services under this Agreement, including, without limitation, industry data and information concerning the Disclosing Party’s past, present or future students, customers, suppliers, technologies, systems, Academic Programs, products, strategies, business models or processes.
- 1.4. **“Contractor-Identified Students”** are undergraduate and graduate International Students, including transfer students, as well as IEC students, who are (1) recruited by Contractor; (2) enrolled in a University Program; (3) have paid the respective tuition and fees to University following an introduction to University via Contractor; and (4) are ineligible to receive Title IV program funds under the Higher Education Act of 1965, as amended (**“Title IV”**), as defined by federal guidelines (<https://studentaid.gov/understand-aid/eligibility>).
- 1.5. **“Contractor Fee”** means the Undergraduate Fee, Graduate Fee, and IEC Program Fee, as those terms are defined under the financial terms, which are attached herein as Appendix A: Financial Terms and incorporated by reference.
- 1.6. **“Excluded Program”** means a program that University makes temporarily or permanently ineligible for Contractor’s Services, which University may do from time to time and at University’s sole discretion.
- 1.7. **“Extension Term”** means the agreed time period that starts immediately after the Initial Term or previous Extension Term until the agreed end date.
- 1.8. **“First Academic Year”** means the first two (2) consecutive semesters a Contractor-Identified Student is enrolled in an Academic Program (e.g., Fall and Spring consecutive semesters or Spring and Fall consecutive semesters excluding intersessions).
- 1.9. **“Full-time”** means a minimum of twelve (12) academic credits each semester for Undergraduate Programs and a minimum of nine (9) academic credits each semester for Master Programs.
- 1.10. **“IEC Program”** means the Full-time registered English as a second language education courses offered by University’s Intensive English Center and made available to International Students. It is designed for Prospective Students whose English proficiency is not sufficient for admission to the University's Academic Programs but who otherwise meet the admissions requirements for the University's English-only program.
- 1.11. **“Initial Term”** means the agreed time period starting at the Effective Date until the agreed end date of the Agreement.

- 1.12. **"International Student"** is a person who is neither a U.S. citizen nor a U.S. permanent resident who resides in a country outside the United States, is or intends to be temporarily in the U.S. on a non-immigrant visa, and is ineligible for federal financial aid.
- 1.13. **"Laws"** means the laws of the State of New York and the United States of America, and any other laws to which University is subject, as may be amended or modified from time to time.
- 1.14. **"Minimum Screening Parameters"** are the recommended screening criteria set by University for Contractor-Identified Students to be considered for admission. These parameters include key threshold metrics, such as English language proficiency tests, satisfaction of course/grade requirements, meeting prerequisites, and compliance with visa requirements.
- 1.15. **"Net IEC Program Fees"** means the IEC program fees for the prevailing Academic Year published by University at [www.stonybrook.edu/iec/calendar-and-fees/tuition-and-fees.php](http://www.stonybrook.edu/iec/calendar-and-fees/tuition-and-fees.php) and actually received by University, minus any applicable discounts, waivers, grants, or scholarships granted by University; this does not include any tuition collected by University for credit courses taken by students during their non-matriculated status while attending the IEC Program.
- 1.16. **"Net Tuition"** is University's tuition, excluding other fees, for the prevailing Academic Year available at <https://www.stonybrook.edu/bursar/tuition> and actually received by University, minus any applicable discounts, waivers, grants or scholarships granted by University.
- 1.17. **"People's Republic of China"** or **"PRC"** refers to the continental landmass under the direct control of the PRC, including the islands of Hainan Province and five major autonomous regions (i.e., Tibet, Inner Mongolia, Xinjiang, Ningxia and Guangxi), but excluding the Hong Kong Special Autonomous Region (SAR), Macao SAR and Taiwan.
- 1.18. **"Prospective Student"** means a person who is a resident of a country other than the United States and who intends to become, or who has taken any steps towards becoming, an International Student.
- 1.19. **"Services"** means the services to be provided by Contractor under this Agreement set forth in **Section 6** of this Agreement.
- 1.20. **"Sub-Agent"** means a Contractor's affiliate, subsidiary, subcontractor, sub-agent, third-party service provider, and/or contractor, agent or representative, whether an individual or a legal or quasi-legal entity, that is retained, engaged, employed or otherwise contracted by Contractor to one or more of the obligations of the Contractor outlined in this Agreement, including but not limited to, the recruitment of International Students for or to the University.

- 1.21. “**Territory**” is defined in Section 2.1 of this Agreement.
- 1.22. “**Tail Phase**” means a phase following the end of the Term during which International Students can still be identified as Contractor-Identified Students based on their activities during the Term.
- 1.23. “**Term**” is the Initial Term together with any applicable Extension Term.
- 1.24. “**University Materials**” means brochures, prospectuses, and information for inclusion on Contractor’s marketing materials (including University Marks) provided by University to Contractor.
- 1.25. “**University Marks**” are the University’s name, logos, and other indicia, copyrights, trademarks, service marks and other intellectual property rights of University used in its marketing and branding materials.
- 1.26. “**University Programs**” is defined in **Section 2.1** of this Agreement.
- 1.27. **Interpretation.** For purposes of this Agreement (including any related schedules or exhibits), except as otherwise expressly provided: (a) the terms defined in this Agreement include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other gender; (b) references in this Agreement to “Sections,” “subsections,” “paragraphs” and other subdivisions without reference to a document are to designated Sections, subsections, paragraphs and other subdivisions of this Agreement; (c) the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not, unless specifically provided, to any particular provision; (d) the words “e.g.,” “include,” “includes,” “including” and other words of similar import are deemed to be followed by “without limitation” or “but not limited to” whether or not they are in fact followed by such words or words of like import; and (e) money is in United States dollars unless otherwise stated and a reference to ‘US\$’, ‘\$US’, ‘dollar’, ‘\$’, or ‘USD’ is a reference to United States currency. The Parties acknowledge and agree that this Agreement is the result of extensive negotiations between the Parties and their respective counsel, and that this Agreement shall not be construed against any party by virtue of its role or its counsel’s role in the drafting hereof.
- 1.28. **Purpose.** The Purpose of this Agreement is to recruit qualified Prospective Students for University.

## 2. **ENGAGEMENT AND TERM**

### 2.1. **Engagement**

- 2.1.1. Contractor agrees to perform for the University the Services described in **Section 6** of this Agreement during the Term, related to the University’s Academic Programs

and IEC Programs below (“University Programs”).

University Programs		Included
Academic Programs	Undergraduate Programs: both freshman & transfer	Yes
	Master Programs	Yes
IEC Program		Yes

- 2.1.2. Prior to the commencement of recruitment each year, the University may inform Contractor in writing of specific University Programs to prioritize for recruitment purposes, and Contractor shall use its best efforts to prioritize its recruitment efforts for such University Programs.
- 2.1.3. The conditions below apply to University Programs offered outside of the U.S. unless otherwise agreed upon by both Parties in writing. University will promptly communicate any changes or updates to University Programs to Contractor.

<b>SUNY Korea</b>	Certain University Programs are offered at SUNY Korea. Students who enroll in a University Program at SUNY Korea following an introduction to University via Contractor are <u>NOT</u> considered Contractor-Identified Students.
<b>Stony Brook Institute at Anhui University</b>	Stony Brook Institute at Anhui University (SBIAHU) is a jointly established institute of University and Anhui University in China where SBIAHU students transfer to University in their last year to complete University’s degree requirements. Transfer students who enroll in a University Program at SBIAHU following an introduction to University via Contractor are <u>NOT</u> considered Contractor-Identified Students.
<b>First Year Abroad Program</b>	University operates specific international Academic Programs, allowing admitted students to spend their first year abroad (“First Year Abroad Program”). International Students participating in the First Year Abroad Program, following an introduction to University via Contractor, are considered Contractor-Identified Students.

- 2.1.4. Contractor agrees that Contractor and its Sub-Agents shall recruit International Students in the Territory or Territories, which are attached herein as **Appendix B: Recruitment Territories** and incorporated by reference.
- 2.1.5. University agrees to provide to Contractor the information and assistance described in **Section 4** of the Agreement.

## 2.2. Term

- 2.2.1. The Initial Term of this Agreement shall commence on the Effective Date and shall

expire on the third anniversary thereof unless terminated by either Party in accordance with **Section 13** of this Agreement.

- 2.2.2.** The Initial Term is renewable at the sole discretion of University. If University wishes to renew this Agreement, it shall provide written notice not less than 60 days prior to the last day of the Term, unless terminated earlier in accordance with **Section 13**. After the expiration of the Term, the Parties may renew this Agreement on the same terms as set forth herein or on such other terms as they may mutually agree. This Agreement will not automatically renew.

### **3. ETHICAL PRINCIPLES AND BEST PRACTICES**

- 3.1.** Contractor represents and warrants that it has read and agrees to comply with those statements of ethical principles and best practices related to International Student recruitment, as such statements are further contained below, as it may be amended from time to time:

- 3.1.1.** NACAC'S Guide to Ethical Practice in College Admission

[https://www.nacacnet.org/wp-content/uploads/NACAC-Guide-to-Ethical-Practice-in-College-Admission\\_Dec.-2023\\_FINAL.pdf](https://www.nacacnet.org/wp-content/uploads/NACAC-Guide-to-Ethical-Practice-in-College-Admission_Dec.-2023_FINAL.pdf)

- 3.1.2.** NAFSA's Statement of Ethical Principles

[https://www.nafsa.org/sites/default/files/media/document/ethical\\_principles.pdf](https://www.nafsa.org/sites/default/files/media/document/ethical_principles.pdf)

- 3.1.3.** AIRC Educational Agency Certification Standards

<https://static1.squarespace.com/static/5d1cea1f24c080000113b415/t/60ddeacaff93c4637e7fa48b/1625156299111/AIRC+Standards+2021+font.pdf>

- 3.2.** Contractor agrees to take any and all necessary steps to ensure that such ethical principles and best practices will be equally complied with by Sub-Agents.

### **4. UNIVERSITY RESPONSIBILITIES**

- 4.1.** University shall:

- 4.1.1.** Conduct regular meetings with Contractor, visit Contractor as needed, and establish a single point of contact for purposes of communicating with Contractor on behalf of University and carrying out this Agreement.

- 4.1.2.** Establish the Minimum Screening Parameters for Contractor to screen viable candidates for entry to University Programs.

- 4.1.3.** Promptly provide current, complete and sufficient University Materials and other information to enable Contractor to perform the Services, including but not limited

to, marketing materials such as brochures and content for inclusion on Contractor's websites, social media and email communication.

- 4.1.4. Acknowledge receipt of applications, process the applications and render admission decisions in alignment with admission decision release dates. University will inform Contractor of the status of the Prospective Students at each phase of the admission process. University will release the admission decision and send the admission decision packet (letter and I-20 forms) directly to Prospective Students, in compliance with federal requirements.
- 4.1.5. Help Contractor to access information about visa requirements and the visa application process.
- 4.1.6. Promptly communicate to Contractor changes or updates to:
  - 4.1.6.1. University policies and procedures;
  - 4.1.6.2. University Materials, including academic calendars, registration guides, health requirements for Prospective Students, and other information that Contractor may reasonably require to provide Services;
  - 4.1.6.3. University Program information;
  - 4.1.6.4. Minimum Screening Parameters; and
  - 4.1.6.5. Legal or regulatory visa requirements of which University becomes aware.

## 5. **FINANCIAL TERMS**

The Parties agree to be bound by financial terms, which are attached herein as **Appendix A: Financial Terms** and incorporated by reference.

## 6. **CONTRACTOR RESPONSIBILITIES**

- 6.1. General Responsibility: Contractor shall at all times during the Agreement Term remain responsible.
- 6.2. If requested by the SUNY Chancellor or his or her designee, Contractor shall present evidence of its continuing legal authority to do business in its legal jurisdiction(s), integrity, experience, ability, prior performance, and organizational and financial capacity.
- 6.3. Without limiting the foregoing, Contractor will:

- 6.3.1. in performing its obligations hereunder, comply with Contractor's obligations under all applicable laws relating to anti-bribery and anti-corruption; information privacy and security; and modern slavery ("Relevant Requirements");
- 6.3.2. have and shall maintain in place throughout the Term Contractor's own policies and procedures, including adequate procedures to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- 6.3.3. organize all activities in the Territory relating to the recruitment of International Students to University Programs specified in **Section 2.1.1**, including but not limited to advertising, seminars, public notices and prospectuses to be handed out to Prospective Students ("Promotional Activities"). Contractor shall be solely responsible for all costs relating to the Promotional Activities; University will not reimburse the Contractor for travel and/or other expenses;
- 6.3.4. ensure that all Promotional Activities are in the best interests of University and that they accurately reflect University's policies and practices and obtain University's consent to the content of any materials and/or Promotional Activities prior to dissemination or presentation in any form;
- 6.3.5. ensure that all Prospective Students recruited to University meet the visa requirements of the respective country;
- 6.3.6. ensure that all Prospective Students who are granted visas to the U.S. and who have been properly admitted to the University programs are aware of the departure information for traveling purposes;
- 6.3.7. ensure that relevant application fees, if applicable, accompany Prospective Students' application documents;
- 6.3.8. report to University, on an annual basis, or from time to time, at University's request, as to the Promotional Activities of the Contractor and its success in recruiting International Students to University;
- 6.3.9. be solely responsible for ensuring that the Contractor has appropriate disability, malpractice and comprehensive general liability insurance coverage; and, releases University from any obligation or responsibility to provide such coverage; and
- 6.3.10. have no conflict of interest in providing Services, and University will not be thereby compromised nor suffer loss.

**6.4. Suspension of Work for Non-Responsibility:** The SUNY Chancellor, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may

resume at such time as the SUNY Chancellor or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

**6.5. Termination for Non-Responsibility:** Upon written notice to the Contractor and a reasonable opportunity to be heard with appropriate SUNY officials or staff, the Contract may be terminated by the SUNY Chancellor or his or her designee at the Contractor's expense, where the Contractor is determined by the SUNY Chancellor or his or her designee to be non-responsible. In such event, the SUNY Chancellor or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

**6.6.** Contractor shall establish a single point of contact for purposes of communicating with University on behalf of Contractor and carrying out this Agreement.

**6.6.1.** For the purposes of this Subsection, Contractor's single point of contact shall be Contractor's Chief Operation Officer, Lydia Xu.

**6.7.** Contractor shall provide services, which are attached herein as **Appendix C: Contractor Services** and incorporated by reference.

## **7. MUTUAL OBLIGATIONS**

**7.1.** Each Party in performing its obligations hereunder shall comply with all applicable foreign and domestic laws.

**7.1.1.** Compliance with Laws. Each Party agrees to perform (including with respect to the taking of action or refraining from taking action) its obligations under this Agreement in accordance with applicable laws, rules, regulations, accreditation standards, policies and procedures of the country and/or local region governing each Party, including those laws, rules, regulation, accreditation standards, policies and procedures, applicable to University and this Agreement (even if not on their face applicable to Contractor), including but not limited to U.S. non-discrimination laws, anti-harassment and anti-foreign corruption and bribery laws. Contractor will prohibit to the extent permitted by applicable law, discrimination and harassment against an individual on the basis of that person's race, color, religion, gender, age, sexual orientation, national origin, physical or mental disability, veteran status, genetic information, or any other status protected under federal, state, local, law or Institution policy. Contractor agrees to engage in appropriate measures to prevent discrimination, harassment, retaliation, sexual misconduct, and violence, and Contractor agrees to promptly notify the University's Office of Equity and Access upon being informed of, or having a reasonable basis to suspect that there has been, discrimination against, harassment of, retaliation against, or sexual misconduct, violence or stalking involving Contractor. Contractor agrees to prohibit retaliation against any individual (by Contractor) who has made a good faith complaint of discrimination, harassment, sexual misconduct, violence, or anyone who has cooperated in good faith in the investigation of a complaint. Contractor agrees to

take every step necessary to protect a complainant and any witnesses against retaliation for bringing a complaint of discrimination. In accordance with laws and regulations applicable to University, University must promptly and fairly respond to allegations of discrimination, harassment, sexual harassment, sexual misconduct, domestic/dating violence and stalking in accordance with the Policies and applicable laws. Contractor agrees to cooperate with University in the event of an investigation and any resulting actions required to be taken as a result of such investigation, in accordance with applicable laws, policies, and regulations.

- 7.1.2. Compliance with Contractor's Local Laws. Contractor hereby represents and warrants that it shall be responsible for complying with all necessary local laws, regulations, policies, and applicable regulatory guidance required for the performance of its obligations under this Agreement. Contractor shall bear full financial and legal responsibility for performing obligations related to this compliance and for obtaining any and all necessary permits, licenses, consents, financial, regulatory, and/or legal approvals, as they may be needed for this Agreement.
- 7.2. Each party in performing its obligations hereunder shall provide accurate and complete information, particularly in any material (including without limitation marketing materials) that is intended, or could reasonably be inferred to be intended, for use by third parties.
- 7.3. The Parties to this Agreement agree to hold in confidence and not to re-disclose any Confidential Information, except that the Receiving Party may use or disclose Confidential Information: (a) to its employees and affiliates (including without limitation Sub-Agents) or others to the extent necessary to render any service hereunder, provided that the Disclosing Party is first notified of the information that will be provided to any third party outside of this Agreement and provided further that such Confidential Information is re-disclosed only after such third party is required to maintain it in confidence as required hereunder; (b) to the extent expressly authorized by the Disclosing Party; (c) to the extent that, at the time of disclosure, such Confidential Information is in the public domain, or after disclosure, enters the public domain other than by breach of the terms of this Agreement; (d) that is in the possession of the Receiving Party at the time of disclosure and was not acquired directly or indirectly from the Disclosing Party; (e) that is subsequently received on a non-confidential basis from a third party having a right to provide such information; or (f) as required by applicable law, an order during the course of a judicial or regulatory proceeding, or as required by a government authority. Contractor shall treat all information provided by University as Confidential Information and shall not disclose such information or utilize information other than to the extent disclosure is required to perform the Services in accordance with this Agreement.
- 7.4. Contractor acknowledges that the Customer is an agency of the State of New York, and as such, any and all agreements to which the Customer is a party are considered public records and subject to disclosure under the New York State Freedom of Information Law ("FOIL") and acknowledges that the Customer may be required by statute, law, or

regulation or pursuant to the terms of a subpoena, court order or other similar document to disclose this Agreement or information in this Agreement within the time frames provided by statute, law, regulation, subpoena, court order or other similar document. If Contractor believes that any information in this Agreement constitutes a trade secret or should otherwise be treated as confidential and qualifies for such treatment under FOIL and wishes such information not to be disclosed if requested pursuant to Articles 6 and 6A of the New York State Public Officers Law, Contractor shall submit with this Agreement a separate letter specifically identifying the page number(s), line(s), or other appropriate designation(s) containing such information, explaining in detail why such information is a trade secret or should be kept confidential in accordance with section 87(2) of the Public Officers Law and formally requesting that such information be confidential. Only Contractor's proprietary information that satisfies the requirements of section 87(2)(d) of the Public Officers Law shall be excepted from disclosure thereunder. The Customer will give prior notice of such disclosure to Contractor to permit Contractor to seek a protective order prior to the time frames for disclosure provided by statute, law, regulation, subpoena, court order or other similar document. If Contractor fails to obtain a timely entry of such protective order and fails to provide the Customer with a copy of a duly executed protective order within the time frames for disclosure provided by statute, law, regulation, subpoena, court order or other similar document, the Customer shall disclose the information.

## **8. INTELLECTUAL PROPERTY**

- 8.1.** University represents and warrants that it owns or has the right to use all intellectual property embodied in information and material provided by University to Contractor in connection with this Agreement. University agrees and warrants that Contractor's use of University intellectual property shall not infringe on the intellectual property rights or other ownership rights of any third party.
- 8.2.** Contractor shall own and retain all intellectual property rights (including all rights under copyright) in all reports and other materials created by Contractor in performing Services under this Agreement. Contractor also shall retain all rights to its software and technologies (including without limitation the Contractor database), ideas, concepts, know-how, methods, techniques, processes and skills, and adaptations thereof, that may be utilized in providing the Services under this Agreement.
- 8.3.** Contractor shall obtain University's prior written approval as to each specific use of University Materials (including University Marks) for marketing as reasonably required by Contractor to perform the Services under this Agreement. Contractor shall comply with the requirements of **Section 6.3** and Appendix C of this Agreement with respect to each specific use of University Materials.

## **9. PRIVACY AND SECURITY**

In connection with this Agreement, Contractor agrees to abide by the clauses related to privacy and security, which are attached herein as **Appendix D: Privacy and Security** and incorporated by reference.

## **10. NON-EXCLUSIVITY**

The Agreement shall be non-exclusive. The provisions of this Agreement are expressly limited to the relationship between Contractor and University with respect to the undertaking specifically described herein. Nothing herein shall prevent University from forming agreements with any individuals or parties, including without limitation other recruiters, anywhere in the world.

## **11. ACCREDITATION AND LICENSES**

The Parties have set forth the terms, conditions and responsibilities in this Agreement in the good faith belief that they are fully in compliance with all legal and accreditation requirements generally applicable to Contractor and specifically applicable to International Students; provided, however, in the event that University reasonably determines that the performance of any particular service by Contractor is in violation of such legal or accreditation requirements, or creates a third party servicer relationship, the Parties agree that such service shall be promptly modified to the extent reasonably necessary to secure continued compliance with such legal and accreditation requirements. Upon such a determination, University and Contractor shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties to this Agreement as closely as possible and in a mutually acceptable manner in order that the transactions contemplated by this Agreement are consummated as originally contemplated to the greatest extent possible and in order to achieve, to the greatest extent possible, the same overall economic, financial and business arrangement contemplated hereunder and thereunder in order to ensure that the Parties realize and achieve the benefit of their bargain as set forth in this Agreement.

## **12. INDEMNIFICATION**

**12.1.** Contractor agrees to defend, indemnify, and hold harmless University and its trustees, officers, employees and agents, and assigns from and against any action, claim, cost, damage, demand, expense, loss, liability, or third-party claim, including reasonable attorney and expert fees and costs, arising from or relating to:

**12.1.1.** the negligence or willful misconduct of Contractor, its trustees or directors, officers, and/or Sub-Agents;

**12.1.2.** any claim or allegation by a third party that Contractor's materials produced under this Agreement misappropriate, infringe or violate such third party's intellectual and/or other proprietary rights;

- 12.1.3. any material breach of any provision of this Agreement, including any warranties and representations made by Contractor in connection with this Agreement; or
- 12.1.4. any failure by Contractor to materially comply with any applicable national, state/provincial, or local laws, regulations, or codes in the performance of its obligations under this Agreement.
- 12.2. In this Section, "Contractor's materials" means written information about Contractor that is created by Contractor but expressly excludes any information or materials provided by University, or University's agents, directors, officers or employees, or a student, or any other party.
- 12.3. **NO PARTY WILL BE LIABLE TO ANY OTHER PARTY (OR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM ANY OTHER PARTY'S RIGHTS) FOR PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES OR FOR LOST PROFITS OR FOR LOSS OF PROFITS OF ANY KIND AS A RESULT OF BREACH OF ANY TERM OF THIS AGREEMENT.**
- 12.4. Without limitation of any other rights and remedies available at law or equity, in the event of any breach of this Agreement by Contractor with respect to any error or defect in the provision of any of the Services, Contractor shall, at University's request, correct such error or defect or re-perform or otherwise cure such Service in a timely manner at the reasonable expense of Contractor.
- 12.5. The obligations set forth in this Section shall survive the expiration or termination of this Agreement.

### **13. TERMINATION**

- 13.1. **Termination without Cause.** Either Party may terminate this Agreement without cause upon not less than ninety (90) calendar days' written notice to the other Party.
- 13.2. **Termination for Cause**
  - 13.2.1. University can terminate this Agreement at any time and with immediate effect by giving notice to Contractor if University reasonably determines Contractor is in breach or has breached any provision of this Agreement.
  - 13.2.2. Contractor may terminate this Agreement immediately in the event that University materially breaches this Agreement and fails to remedy such breach within thirty (30) calendar days of its receiving written notice from Contractor.
  - 13.2.3. Either Party may terminate this Agreement immediately upon written notice if the other Party under any applicable system of law:

- 13.2.3.1. makes an assignment for the benefit of its creditors;
- 13.2.3.2. becomes the subject of any proceeding (whether voluntary or involuntary) for its winding up or for the appointment of a liquidator or receiver;
- 13.2.3.3. is adjudicated to be insolvent; or
- 13.2.3.4. becomes unable to pay its material debts as they become due.

**13.3. Change in Law.** If, during the Term of this Agreement, an educational agency rule, or any federal, state or local law, statute, rule or regulation (i) renders one or more material provisions of this Agreement unlawful, or (ii) otherwise exposes one or more of the Parties to material liability or penalties, including loss of accreditation or state or federal funding, or (iii) renders any term of this Agreement impossible (items i through iii above collectively an "Adverse Event"); and, if an Adverse Event cannot be avoided by an amendment to this Agreement mutually agreeable to the Parties, a Party may terminate the Agreement upon written notice to the other Party.

#### **13.4. Effect of Termination**

**13.4.1.** When this Agreement terminates or expires:

- 13.4.1.1. Contractor must submit all applications and fees from Prospective Students received up to the date of termination;
- 13.4.1.2. Contractor must immediately cease to use any advertising, promotional or other material supplied by University and return all such material to University by registered mail or a reputable international courier within ten (10) days;
- 13.4.1.3. Each Party must immediately cease making any representations of any collaboration between the Parties, except as is necessary to conclude pending transactions;
- 13.4.1.4. Within thirty (30) days, each Party shall return to the other Party all program materials provided by the other Party by registered mail, and each Party shall then permanently destroy any electronic copies of the other Party's materials with the understanding that it is the intent of this Agreement that upon expiration or termination, neither Party shall retain any of the other Party's program materials, program-related materials or proprietary information.

**13.4.2.** The expiration or early termination of this Agreement by either Party does not affect any accrued rights or remedies of either Party.

**13.4.3.** Notwithstanding anything in this Section to the contrary, unless University terminates this Agreement for material breach, or a change in law that renders this

Agreement or the terms thereof unlawful, following the Term, University will continue to pay to Contractor any fees specified in this Agreement (including Appendix A) for Contractor-Identified Students who (i) are enrolled at University at the end of the Term; or (ii) applied prior to Termination and enroll in University within two (2) semesters following the Term.

**13.5. Tail Phase.** Notwithstanding the termination of this Agreement, except when termination is due to a material breach by Contractor, University will pay Contractor for a tail period of one (1) semester that immediately follows the date of termination excluding intersessions (e.g., if termination occurs during the Fall semester, the tail period will consist of the following Spring semester; if termination occurs during the Spring semester, the tail period will consist of the following Fall semester). During the Tail Phase, University will continue to receive all Services from Contractor under this Agreement.

#### **14. GOVERNING LAW; DISPUTE RESOLUTION**

**14.1.** This Agreement shall be construed and enforced solely pursuant to the laws of the State of New York (U.S.), without giving effect to the principles of conflicts of laws thereof, and the Parties agree that this Agreement shall be subject to the sole and exclusive jurisdiction of the state and federal courts located in the State of New York (U.S.).

**14.2.** If a difference or dispute arises out of or in connection with this Agreement:

**14.2.1.** the disputing Party will provide written notice to the other Party, setting out the matters giving rise to the difference or dispute and the relief sought (“Notice”);

**14.2.2.** within thirty (30) calendar days of receiving such Notice, the recipient shall provide a written reply to the disputing Party, setting out the recipient’s response to the matters set out in the Notice and any additional matters the recipient considers relevant (“Reply”);

**14.2.3.** the Parties shall, in good faith and using all commercially reasonable efforts, seek to resolve the dispute within sixty (60) calendar days after the date on which the disputing Party received the Reply, including by involving senior management of both Parties.

**14.3.** No Party may commence any court proceedings in relation to any difference or dispute arising out of this Agreement until it shall have attempted to settle the same by use of the dispute resolution process in **Section 14.2** and either that procedure has been exhausted or the other Party has failed to participate in the procedure.

**14.4.** The provisions of this Section shall not affect a Party’s rights to initiate court proceedings if the difference or dispute is not resolved pursuant to **Section 14.2**.

## **15. NOTICES**

- 15.1.** All notices or other communications required or permitted under this Agreement shall be in writing and shall be given by personal delivery, commercial courier, or electronic mail (e-mail) addressed to the Party at its principal address as set out on the first page of this Agreement or such other address as the Parties may notify to each other from time to time.
- 15.2.** All notices and other communications required or permitted under this Agreement that are addressed as provided in this Section will:
  - 15.2.1.** if delivered personally, be deemed given upon delivery;
  - 15.2.2.** if delivered by commercial courier, be deemed given upon receipt; and
  - 15.2.3.** if delivered by electronic mail (e-mail) transmission, be deemed given when sent.

## **16. ASSIGNMENT AND SUBCONTRACTING**

- 16.1.** The provisions in this Section shall apply to any entity performing Services under this Agreement, including but not limited to Contractor's Sub-Agents.
- 16.2.** Save as expressly provided in this Section neither Party shall assign, transfer, subcontract or deal in this Agreement, or any of its rights, responsibilities, or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld. University may withdraw its consent at any time.
- 16.3.** Where any responsibility or obligation under this Agreement is assigned, or transferred by Contractor to a Sub-Agent, Contractor shall remain entirely responsible for such responsibilities and obligations and for compliance by such Sub-Agent with all of the terms of this Agreement. If at any time during the Term Contractor becomes aware of non-compliance by any Sub-Agent, Contractor shall require the Sub-Agent to cease immediately the performance of any Services under this Agreement and cooperate as necessary to remediate any damage done by the Sub-Agent.
- 16.4.** At University's request, Contractor shall disclose to University the name of each Sub-Agent that may perform Services pursuant to this Agreement.
- 16.5.** Contractor shall conduct due diligence on each Sub-Agent prior to assigning, transferring, subcontracting, or dealing with them to perform Services pursuant to this Agreement. At minimum, Contractor agrees to obtain and review the following information for each of its Sub-Agents before engaging the Sub-Agent to perform Services pursuant to this Agreement:

- 16.5.1. Name for individuals, and name of legal entity for corporate entities;
- 16.5.2. For corporate entities, corporate establishment information and/or permits and authorizations to provide the Services or perform the activities sub-contracted by Contractor to Sub-Agent;
- 16.5.3. For individuals who are not citizens of the Territory where they are performing Services, work authorizations;
- 16.5.4. Regardless of entity type (individual or corporate) attestation that no other business relationships, including those entities owned or controlled by the Sub-Agent, trigger a conflict of interest to the Services subcontracted by the Contractor to the Sub-Agent, or result in a material detriment to the interests of the University;
- 16.5.5. Attestation by the Sub-Agent that it is bound by the material terms of this Agreement; and
- 16.5.6. Information or other documentation that demonstrates material compliance by the Sub-Agent with in-country legal obligations in the Territory which the Sub-Agent operates.
- 16.6. Contractor will not assign, transfer, subcontract, or deal with any Sub-Agent for which such review indicates that the Sub-Agent may be unable to perform Services pursuant to this Agreement due to a conflict of interest or for any other reason.
- 16.7. Contractor shall conduct ongoing due diligence of all Sub-Agents and, at the University's request, share its process, including the frequency with which such due diligence is conducted, with University.
- 16.8. Contractor shall ensure the ongoing training, professional development, and consistency of representation of all Sub-Agents and shall share its policies, procedures and methods with University.
- 16.9. Contractor shall prohibit Sub-Agents from subcontracting, without the University's prior written approval, one or more of the obligations of the Contractor outlined in this Agreement, including but not limited to the recruitment of International Students for or to the University.
- 16.10. University shall be permitted to list any and all of Contractor's Sub-Agents on University's website for the purpose of ensuring Prospective Students can verify that there is an official relationship between the Sub-Agent and the University.

## **17. RELATIONSHIP OF THE PARTIES**

- 17.1. The Parties agree that Contractor is exclusively responsible for all taxes, third-party payments or fees, costs and expenses incurred by Contractor, including any payments or fees to Sub-Agents of the Contractor.
- 17.2. The Parties agree that neither Contractor nor any of its Sub-Agents are not eligible to participate in any employee benefit plans or other benefits provided by University to its employees.
- 17.3. The Parties agree that this Agreement does not create any contractual, financial or other legal relationship between the University and the Sub-Agents of the Contractor. The Contractor acknowledges and affirms that the University is not responsible to compensate any of the Contractor's Sub-Agents.
- 17.4. Nothing in this Agreement shall be construed to create an employer-employee relationship between the Parties or any partnership, joint venture, or agency relationship between the Parties. Contractor represents and warrants that its relationship to University and its various subdivisions and affiliates shall be that of an independent contractor and NOT an employee of University for any purpose whatsoever. Contractor is engaged by University only for the purposes and to the extent set forth in this Agreement. Subject only to the terms of this Agreement, Contractor shall have complete control of its employees and agents engaged in the Services to be provided, and Contractor shall be solely responsible for payment of all compensation or commission owed to its employees and agents, as well as employment-related taxes. Contractor does not have, nor shall it hold itself out as having, any right, power or authority to create any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon University. Contractor shall ensure that neither it nor its employees or agents shall act or hold themselves out as agents or employees of University.

## **18. MISCELLANEOUS**

- 18.1. **Severability.** If any provision of this Agreement not essential to accomplishing its purposes is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- 18.2. **Headings.** The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any of its provisions.
- 18.3. **Electronic Signatures.** Each Party agrees that the electronic signatures, whether digital or encrypted, of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature, for this Agreement, means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by

a Party with the intent to sign such record, including facsimile or email electronic signatures.

- 18.4. Remedies Cumulative.** All rights, powers and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise or beginning of the exercise of any right, power or remedy thereof by a party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such party. The Parties agree that each Party shall be entitled, in addition to other remedies that may be available to it, to seek immediate injunctive relief from any breach of any of the provisions of this Agreement and to specific performance of its rights hereunder, as well as to any other remedies available at law or in equity.
- 18.5. Failure to Exercise Right not a Waiver.** No failure or delay by a Party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power, or privilege under this Agreement. No term of this Agreement shall be deemed waived, and no breach of this Agreement excused, unless the waiver or consent is in writing signed by the Party granting such waiver or consent.
- 18.6. Force Majeure.** No Party shall be responsible or liable for any default in performance of its obligations under this Agreement, if such default in performance arises directly or indirectly from causes beyond the reasonable control of that Party, including, but not limited to, fire, flood, war, embargo, strike, boycott, lockout, accident, explosion, fire, riot, insurrection, terrorist act, epidemic, pandemic, Act of God, or other action by governmental authority, other than by reason of an act or omission of the Party, but only to the extent and for the duration that the cause prevents performance of the obligation.
- 18.7. Modifications for Compliance.** The Parties acknowledge that the regulations of the U.S. Department of Education (the "Department"), among other things, restrict the manner in which institutions that participate in the student financial assistance programs authorized by Title IV may compensate persons and entities involved in student recruiting, enrollment admissions, retention and related activities, and that the Department may, during the Term, further revise and/or interpret such regulations in such a way that such regulations could affect the legal feasibility of the calculation and payment of fees under this Agreement. If the Department revises or interprets such regulations, or should any accrediting body or federal or state court or agency otherwise make a decision that materially impacts the ability of the Parties to deliver one or more of the obligations under this Agreement, the Parties will negotiate promptly and in good faith with to modify this Agreement to comply with applicable regulations or decisions. Similarly, there may be other educational laws, regulations or restrictions, or academic accreditation requirements imposed upon University that could materially and adversely affect the ability of one or both of the Parties to perform their respective obligations under this Agreement. If compliance with such other laws, regulations or restrictions, including a decision by an accrediting body to

either not accredit or to withdraw accreditation from a program or from University, requires material changes to the programs or obligations of the Parties, then the Parties shall negotiate in good faith to modify this Agreement as necessary to comply with such legal and/or accreditation requirements.

- 18.8. No Title IV Activities.** This Agreement pertains to the recruitment of International Students who are not eligible to receive aid under the federal student aid programs authorized under Title IV. Other than Contractor's prohibition from recruiting students who are eligible for Title IV aid programs, Title IV compliance will remain at all times within the exclusive purview of University. Contractor will not administer any aspects of the University's responsibilities under Title IV. Contractor is not, and will not act as, a Third-party Servicer as that term is defined at 34 C.F.R. § 668.2 or as that term is interpreted in the Department's Dear Colleague Letters. Contractor will indemnify and hold harmless University for any and all damages, including punitive or consequential damages, arising or resulting from violation of this Section by Contractor or its Sub-Agents.
- 18.9. Unlawful Acts or Omissions.** Each Party agrees that, in connection with this Agreement, it will not take any action, or omit to take any action, which would cause another Party to be in violation of the applicable laws of the United States, including but not limited to U.S. nondiscrimination laws, export control and anti-boycott laws and regulations and the U.S. Foreign Corrupt Practices Act, or the applicable laws of Contractor's country.
- 18.10. Restricted Parties & Entities.** It is University's intention to abide by the applicable restrictions of the Office of Foreign Assets Control ("OFAC") U.S. Embargoes and Sanction Programs, which may include financial transactions of any kind, and/or providing services of any kind, including consulting services. Furthermore, University will not engage with parties or entities on any U.S. Government Watch List of Restricted or Denied Parties. University reserves the right to immediately terminate this Agreement if an identified restricted or denied party or entity is engaged.
- 18.11. Anti-Bribery Laws.** Each Party (including, if and as applicable, its members, trustees, directors, officers and employees) agrees that it will comply with all applicable U.S. and non-U.S. law anti-bribery measures, such as the Foreign Corrupt Practices Act (15 U.S.C. Sections 78 dd-1, et seq.). Neither Party will directly or indirectly offer, give, promise to give or authorize the giving of any money, loan, gift, donation, or other thing of value to induce a government official to do or to omit from doing any act in violation of their lawful duty, in order to obtain any improper advantage, or to induce a government official to use his or her influence improperly to affect or influence any act or decision.
- 18.12. Incentive Compensation.** Contractor, on behalf of its directors, officers, employees, agents and representatives, agree to comply with Section 487(a)(20) of the Higher Education Act of 1965, as amended (20 U.S.C. Section 1094(a)(20)), or any successor provision, and the regulations promulgated thereunder by the U.S.

Department of Education at 34 C.F.R. Section 668.14(b)(22), or any successor provision.

- 18.13. Misrepresentation Rule.** Each Party agrees that its employees, permitted subcontractors, and other agents or representatives shall not intentionally or negligently make any misrepresentation concerning University, including the nature of its educational program, its financial charges, the employability of its graduates, or its relationship with the U.S. Department of Education, as proscribed by 34 C.F.R. 668 subpart F ("Misrepresentation Rule"). If a Party learns of a possible or actual misrepresentation made to a student or Prospective Student of University by an employee or agent of that Party, that Party will take all appropriate actions to assure that (i) the specific misrepresentation has been adequately corrected and (ii) similar misrepresentations will not take place in the future. Each Party shall require any subcontractor or other agent or representative providing Services to agree to requirements similar to those set forth in this Section, and each Party is responsible for the compliance of its subcontractors.
- 18.14. Tax Reporting.** Contractor shall have legal and financial responsibility to ensure any and all U.S. and local tax reporting or other reporting, registration approval and/or payment requirement necessitated by performance of the Services are complied with and shall provide University a copy of any required reports and/or receipts, once filed. In addition, Contractor will cooperate with University to provide necessary documentation to determine proper withholding, if any, of U.S. taxes from payment in accordance with Internal Revenue Code and Federal Regulations promulgated thereunder. Payment may be subject to a 30% tax withholding absent documentation satisfactory to University supporting eligibility of a tax treaty exemption.
- 18.15. Clery Act Reporting.** Contractor must cooperate with University and provide information upon request and as necessary to comply with University's obligations under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 USC Section 1092(f)) and accompanying regulations ("Clery Act") and other applicable federal laws and regulations of the United States and well as Contractor's country.
- 18.16. Student Education Records.** Student educational records are protected by the federal Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g (FERPA) and other data privacy requirements in Contractor's country. To the extent applicable, Contractor will comply with FERPA and data privacy requirements and will not access or make any disclosure of student educational records to third parties (including without limitation Sub-Agents) without prior notice to and consent from University or as otherwise provided by law. If the agreement contains a scope of work or any provision that requires or permits Contractor to access or release any student records, then for purposes of this agreement only, University designates Contractor as a "school official" for University under FERPA, as that term is used in FERPA and its implementing regulations. As such, Contractor will comply with FERPA and will not make any disclosure of University students' educational records to third parties (including without limitation Sub-Agents) without prior notice to, and

consent from, University, or as otherwise permitted by law. In addition, any access or disclosures of student educational records made by Contractor or its Sub-Agents must comply with University's definition of legitimate educational purpose. If Contractor violates this Section, Contractor will immediately provide notice of the violation to University.

- 18.17. Non-Disparagement.** During the Term and thereafter, Contractor agrees to take no action which is intended, or would reasonably be expected, to harm University or any of its program(s) and/or its or their reputation or which would reasonably be expected to lead to unwanted or unfavorable publicity to University or any of its programs, regardless of the language employed or the geographic region the action may take place.
- 18.18. No Third-party Rights.** Nothing expressed or referred to in this Agreement will be construed to give any person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties and their successors and assigns.
- 18.19. Representations Regarding Accreditation.** In performing the Services, Contractor shall not represent to any Prospective Student, student recruitment channels, or other third party that University possesses any institutional or programmatic accreditation other than accreditations that University states it possesses in its then current catalog, and nothing in this agreement will allow Contractor or its Sub-Agents to claim for itself or infer any accredited status other than that held by University.
- 18.20. Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- 18.21. Survival.** All provisions of this Agreement that, by their express terms or their nature or context, would ordinarily be deemed to survive beyond the expiration or termination of this Agreement shall survive such expiration or termination for any reason.
- 18.22. Amendments.** This Agreement may be amended only by written agreement signed and executed by authorized representatives of the Parties.
- 18.23. Legal Authority.** Contractor warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind Contractor to its terms. The person(s) executing this agreement on behalf of Contractor warrant(s) that such person(s) have full authorization to execute this Agreement.
- 18.24. Contract Documents.** The following items will be incorporated into, and made part of, the formal agreement:

- i. Appendix A: Financial Terms
- ii. Appendix B: Recruitment Territories
- iii. Appendix C: Contractor Services
- iv. Appendix D: Privacy and Security

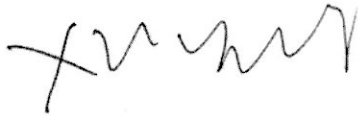
**18.25. Order of Precedence.** In the event of any inconsistency in or conflict among the document elements of the Agreement described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order: this Agreement, Appendix A: Financial Terms, Appendix C: Contractor Services, and Appendix B: Recruitment Territories.

**18.26. Entire Agreement.** The Parties understand and agree that this Agreement, including any appendices or other items referenced above, constitutes the entire understanding between the Parties and supersedes all other verbal and written agreements and negotiations by the Parties relating to the Services under this Agreement. Contractor hereby acknowledges reading and receiving a true and exact copy of this Agreement. Notwithstanding the foregoing, this Agreement shall not affect any agreement currently in force between University and Contractor concerning matters other than the Services.

**[The rest of this page is intentionally blank]**

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the dates set forth below in manner binding upon them.

**Signed for and on behalf of CONTRACTOR:**



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Name: Lydia Xu  
Title: Chief Operation Officer  
Date: April 10, 2024

**Signed for and on behalf of UNIVERSITY:**



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Name: Mary H La Corte  
Title: Assistant Director, Procurement  
Date: 5/13/24

**APPENDIX A**  
**FINANCIAL TERMS**

**1. Definitions**

Terms used with initial capitals that are not otherwise defined in this Appendix have the meaning ascribed to them in the International Student Recruitment Agreement ("**Agreement**") to which this Appendix is an integral part.

**2. Term**

2.1 The Initial Term of the Agreement shall commence on the Effective Date: March 1, 2024. The Contractor Fees apply to Contractor-Identified Students enrolled in the University after the Effective Date, with the earliest enrollment starting as follows:

<b>University Programs</b>		<b>Enrollment</b>
Academic Programs	Undergraduate Programs: all programs for both freshman & transfer	Fall 2024
	Master Programs: limited to programs in the College of Business and Linguistics	Fall 2024
	Master Programs: all programs	Fall 2025
IEC Program		Summer 2024

2.2 The Contractor Fees will be paid for Contractor-Identified Students who submitted applications before the expiration of the Term and enrolled in a University Program in the semester that immediately follows the expiration of the Term.

2.3 From time to time and at University's sole discretion, University may temporarily or permanently exclude certain programs from eligibility ("**Excluded Programs**"). University will communicate Excluded Programs to Contractor in writing, and no fee will be payable by University to Contractor with respect to Contractor-Identified Students who are recruited to Excluded Programs after the transmission of such written communication. In the event that University notifies Contractor of Excluded Programs, University will pay Contractor for Contractor-Identified Students who submitted applications prior to the date University provided such notice.

**3. Contractor Fees**

3.1 Contractor Fee Table

3.1.1 These Financial Terms apply to University Programs below, except with an

exception to certain University Programs offered outside of the United States of America as specified in **Section 1.1** of the Agreement. University will pay Contractor a fee calculated in accordance with this section for each Contractor-Identified Student who is (1) recruited by Contractor; (2) enrolled in a University Program; and (3) has paid the respective tuition and fees to University.

University Programs		Percentage	Duration
Academic Programs	Undergraduate Programs	15% of Net Tuition	First Academic Year
	Master Programs	15% of Net Tuition	First Academic Year
IEC Program		20% of Net IEC Program Fees	20% of Net IEC Program Fees

3.1.2 For each Contractor-Identified Student enrolled in a University Program, University shall pay to Contractor an amount equal to the relevant percentage in the table above. The Undergraduate Fee, the Graduate Fee, and the IEC Fee are collectively the “**Contractor Fee**.”

3.1.3 “**First Academic Year**” means the first two (2) consecutive semesters a Contractor-Identified Student is enrolled in an Academic Program (e.g., Fall and Spring consecutive semesters or Spring and Fall consecutive semesters excluding intersessions). No fee will be payable by University to Contractor after the First Academic Year. If a Contractor-Identified Student enrolls in a University Program for one (1) semester and subsequently for any reason is not enrolled in a University Program for a second consecutive semester, Contractor Fees will be calculated based on the Net Tuition of only the first semester.

3.2 For Academic Programs, for each Contractor-Identified Student enrolled in a Undergraduate Program or Graduate Program, University shall pay to Contractor an amount equal to the relevant percentage in the table above. This percentage is calculated based on the Net Tuition of each semester for the corresponding course or program of study. Net Tuition is defined as the tuition, excluding other fees, published by University (current tuition available here: [www.stonybrook.edu/bursar/tuition](http://www.stonybrook.edu/bursar/tuition)) and actually received by University, minus any applicable discounts, waivers, grants, and/or scholarships (“**Net Tuition**”). In the event that the course or program of study is less than one year in duration, the fee payable to Contractor for each Contractor-Identified Student will be an amount equal to the relevant percentage in the table above of the Net Tuition for that entire course or program of study during Fall or Spring semesters not including intersessions (“**Undergraduate Fee**” or “**Graduate Fee**”).

3.3 For IEC Program, for each Contractor-Identified Student enrolled in a University IEC Program, University shall pay to Contractor an amount equal to the relevant percentage in the table above of the Net IEC Program Fees, which are the IEC Program Fees

- currently published by University (current tuition available here: [www.stonybrook.edu/iec/calendar-and-fees/tuition-and-fees.php](http://www.stonybrook.edu/iec/calendar-and-fees/tuition-and-fees.php)), minus any applicable discounts, waivers, grants, and/or scholarships (“**Net IEC Program Fees**”). This does not include any tuition collected by University for credit courses taken by students during their non-matriculated status while attending the IEC Program. For clarity, University will pay Contractor for Undergraduate Fee and Graduate Fee for Contractor-Identified Students that the Contractor has recruited to the IEC Program who also enroll in a Academic Program in the semester that immediately follows their completion of the IEC Program.
- 3.4
- 3.5 No fee will be payable by University to Contractor if one of the following conditions are met:
- 3.5.1 A student recruited by Contractor withdraws from his or her Academic Program(s) before the end of the semester add/drop period;
  - 3.5.2 A student recruited by Contractor who secures a medical withdrawal or medical leave of absence beyond the semester add/drop date and where the University issued a refund of tuition and fees to such student;
  - 3.5.3 A student recruited by Contractor does not pay their tuition in full. If a student does not pay their tuition, either because the student has not paid in full or is on the University’s tuition installment plan, the fee will be payable in the following semester based on the amount of tuition University collected;
  - 3.5.4 A student recruited by Contractor is accepted by University but is not granted a visa;
  - 3.5.5 A student recruited by Contractor is eligible to receive Title IV program funds under the Higher Education Act of 1965 or superseding legislation;
  - 3.5.6 A student was previously enrolled at University before the Effective Date of this Agreement; or
  - 3.5.7 A student applies to and enrolls in an Excluded Program after the date University has notified Contractor in writing of an Excluded Program in accordance with Section 2.3.
- 3.6 No fee will be payable by University to Contractor where the student is recruited through University’s own international student recruitment channels and efforts within the United States or abroad. University is not responsible for paying Contractor any fees for any subsequent programs a student is enrolled in at University after the First Academic Year.
- 3.7 In the event there are multiple recruiters, including Contractor, who claim to have recruited a student, such discrepancies will be resolved by asking the student to identify

the individual and entity responsible for his or her recruitment to University.

**4. Payment of Contractor Fees**

4.1 The Parties will promptly meet following the commencement of each semester to reconcile payment amounts with respect to Contractor-Identified Students recruited during the current semester.

4.1.1 Contractor will provide reports in writing on all Contractor-Identified Students promptly after the commencement of each semester. Such reports will include each Contractor-Identified Student’s full name, date of birth, an attestation that Contractor recruited each Contractor-Identified Student, and any other information requested by University as University may need to verify that students are Contractor-Identified Students.

4.1.2 University will review the Contractor reports and will confirm the details of any change to the enrollment status of Contractor-Identified Students, including reasonable evidence to support the changes.

4.2 Following each reconciliation, Contractor will invoice the University in accordance with the terms of the Agreement for Contractor-Identified Students recruited during the current semester as well as any agreed-upon unpaid amounts previously incurred by the University. All payments will be made in United States Dollars within thirty (30) days following receipt and approval of a proper invoice which shall not be issued until after the add/drop date for each semester within an Academic Year. Contractor will issue the invoice to the University, and University will pay Contractor based on the dates indicated below:

	<b>Fall Intake</b>	<b>Spring Intake</b>
Invoice Date:	On or about 25 October	On or about 25 February
Payment Due:	25 November	25 March

4.3 Every invoice or New York State Claim for Payment submitted to SUNY by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee’s Federal employer identification number, (ii) the payee’s Federal social security number, and/or (iii) the payee’s Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

4.4 Contractor will promptly refund such overpayments to University in the following circumstances:

4.4.1 When University is required to adjust any amounts it has already paid to Contractor based on post add/drop withdrawals;

4.4.2 When University has otherwise made an overpayment to Contractor.

University may also deduct such overpayment amounts from future amounts owed the Contractor. The Parties will only make payment adjustments one (1) semester after the invoice is received by University, including after the expiration of the Term.

## **5. Expenses**

5.1 Contractor will be responsible for any and all expenses incurred in performing the Services, including travel costs associated with visiting University unless otherwise agreed in writing.

5.2 If University decides to participate in recruitment activities organized by Contractor, such as recruitment trips or fairs, University will be responsible for any and all expenses associated with participating in the activities.

## APPENDIX B

### Recruitment Territories

#### 1. Definitions

Terms used with initial capitals that are not otherwise defined in this Appendix have the meaning ascribed to them in the International Student Recruitment Agreement ("**Agreement**") to which this Appendix is an integral part.

#### 2. Authorized Territories

Contractor agrees that Contractor and its Sub-Agents shall recruit International Students only in the following Territory or Territories. Contractor hereby represents and warrants that Contractor and its Sub-Agents have obtained any and all necessary permits, licenses, consents, financial, regulatory, and/or legal approvals ("**Authorizations**"), as they may be needed to recruit International Students in the following Territory or Territories.

Territory	In-Country Operations	Name of In-Country Subsidiary (If Any)	In-Country Authorizations
The People's Republic of China	Contractor has a legal entity in this country, and also works with other individuals and companies to provide Services under this Agreement.	Shanghai Huachen Xintong Education Technology Co., Ltd.	Our in-country subsidiary is authorized by the host country to provide recruitment services.
Hong Kong	Contractor has a legal entity in this country to provide Services under this Agreement.	Huatong Xinnuo Int'l Cultural Exchange Center Limited	Contractor is authorized by the government of Taipei to provide recruitment services.
Taiwan	Contractor has a legal entity in this country to provide Services under this Agreement.	iae EduNet.co., Ltd	Contractor is authorized by the government of Taipei to provide recruitment services.
Vietnam	Contractor has a legal entity in this country to provide Services under this Agreement.	Huatong International Co., Ltd	Contractor is authorized by the Vietnam to provide recruitment services.
Canada	Contractor has a legal	Huatong International	Contractor is

Territory	In-Country Operations	Name of In-Country Subsidiary (If Any)	In-Country Authorizations
	entity in this country to provide Services under this Agreement.	Holding Ltd.	authorized by the Vancouver(Canada) to provide recruitment services.
Australian	Contractor has a legal entity in this country to provide Services under this Agreement.	HTI Edu Australia Pty. Ltd.	Contractor is authorized by the Australian to provide recruitment services

## APPENDIX C

### CONTRACTOR SERVICES

#### 1. DEFINITIONS

Terms used with initial capitals that are not otherwise defined in this Appendix have the meaning ascribed to them in the International Student Recruitment Agreement ("**Agreement**") to which this Appendix is an integral part.

#### 2. CONTRACTOR SERVICES

##### 2.1. Recruitment and Admission

**2.1.1.** Contractor will recruit Prospective Students, provide information about University, and recommend qualified International Students for admission to University Programs specified in **Section 2.1.1** of the Agreement. In providing the Services, Contractor and its Sub-Agents shall:

**2.1.1.1.** Collaborate with University to develop initiatives targeting International Students for University Programs;

**2.1.1.2.** Promote University Programs with integrity and accuracy and recruit Prospective Students in an honest, ethical and responsible manner;

**2.1.1.3.** Assist to uphold the high reputation of University and of the United States international education sector;

**2.1.1.4.** Promote University Programs using University-approved forms of communication, communication templates and social media, all of which shall be in compliance with the requirements of **Section 4.2** of the Agreement, to perform outreach to Prospective Students;

**2.1.1.5.** Provide Prospective Students full and accurate information about University, including but not limited to its application process, including English language requirements and proficiency levels; enrollment procedures; costs of tuition and fees, room and board, and incidental expenses; visa requirements which must be satisfied by the Prospective Student; academic offerings; student services and activities, and facilities;

**2.1.1.6.** Use the Minimum Screening Parameters set by University to identify and recruit qualified Prospective Students for admission to University Programs in accordance with University's rules, policies, procedures and requirements;

**2.1.1.7.** Accurately inform Prospective Students about the requirements for University admission, which may only be done by reference to the material provided by

University and, when not available, through direct communication with University personnel;

- 2.1.1.8.** Assist Prospective Students to apply to become students of University and for that purpose provide such persons with information about University Programs and assistance in completing forms or applications, including ensuring that all necessary evidence and documents accompany a Prospective Student's application and acceptance of admission offer; however in no event shall Contractor draft or provide substantive materials such as essays or letters on behalf of any Prospective Student;
- 2.1.1.9.** Meet with Prospective Students to ensure that all International Students recruited to University meet the admission requirements, as set out by each University Program, as those requirements may be amended from time to time;
- 2.1.1.10.** Explain that final admission decisions are made by University. Contractor shall not represent that it has decision-making authorization in this respect;
- 2.1.1.11.** Explain the tuition and fees related to each University Program to Prospective Students, and advise Prospective Students that all such tuition and fees will be paid directly to University; additionally, the Contractor shall advise Prospective Students of the refund policies for each University Program;
- 2.1.1.12.** Enter into a written contract with the individual student that details the student's rights and responsibilities, the services the Contractor will provide the student and any fees the Contractor will charge the student. Contractor is prohibited from charging application or other fees that exceed those of University, and from taking any portion of a Prospective Student's scholarships or financial aid as fee-for-service. Contractor shall not require Prospective Students to forfeit their right to transfer from one institution or program to another once in the host country, or charge Prospective Students undue financial penalties for the same;
- 2.1.1.13.** Provide general guidance to Prospective Students on the assembly of original application materials for each student recruited to University prior to any deadlines for submission of such applications and remittance of fees to University; advise Prospective Students that all of the foregoing documentation shall be provided either in English or, where the documentation is not available in English, in official and certified translated form;
- 2.1.1.14.** Provide a list of students to University who submitted applications through Contractor's recruitment efforts. University may request additional methods from the Contractor to verify the Contractor-identified students; Accompany an attestation with the list by the time the student submits their application to the University, affirming the following: 1) the authenticity of the student's signature; 2) the student fully understands the terms and conditions entailed; 3) Contractor has not in any way assisted or advised the student to submit

falsified or embellished application documents; and 4) Contractor has taken reasonable steps to confirm the veracity, authenticity and completeness of the application materials; and

**2.1.1.15.** Perform other services and provide reports or information requested by University or required by this Agreement.

**2.1.2.** Contractor and its Sub-Agents shall inform Prospective Students that:

**2.1.2.1.** Students are required to provide to University a permanent address and email in their country of origin (other than the recruiter's address);

**2.1.2.2.** Students who come to the United States on a student visa must have a primary purpose of studying and must study on a Full-time basis;

**2.1.2.3.** After receiving the required and approved financial documents, University personnel will issue an I-20 and send it directly to the Prospective Student's (not the Contractor's) home address;

**2.1.2.4.** Personal information provided may be made available to Federal and State agencies in compliance with applicable law; and

**2.1.2.5.** University is required by law to inform the Federal government of any changes to students' enrollment status or other changes of condition which may relate to visa status.

**2.1.3.** In providing the Services, Contractor and its Sub-Agents shall NOT engage in the following activities:

**2.1.3.1.** Facilitate applications from Prospective Students who Contractor or its Sub-Agents know do not comply with visa requirements;

**2.1.3.2.** Engage in any dishonest practices, including suggesting to Prospective Students that they can come to the United States on a student visa with a primary purpose other than Full-time study;

**2.1.3.3.** Offer any guarantees to Prospective Students about whether they will be granted a student visa;

**2.1.3.4.** Give inaccurate information to a Prospective Student about the fees and charges payable to University;

**2.1.3.5.** Charge any fee to a Prospective Student for their application or acceptance of an offer, other than those pertinent to the international admissions process, or take any portion of a Prospective Student's scholarships or other financial aid as fee-for-service;

- 2.1.3.6.** Unless authorized by University, offer any guarantees to Prospective Students about the likelihood of awards of financial aid or scholarships;
- 2.1.3.7.** Require Prospective Students to forfeit their right to transfer from one institution or program to another once in the host country;
- 2.1.3.8.** Handle and submit student academic records, complete student applications on their behalf, pose as the student via e-mail or other communications, or access Prospective Students' application accounts;
- 2.1.3.9.** Offer any guarantees to Prospective Students about whether they will be granted admission at University;
- 2.1.3.10.** Offer any guarantees to Prospective Students as to the likelihood of their obtaining employment following their completion of any of University's educational programs;
- 2.1.3.11.** Enter into any contractual arrangements on behalf of University;
- 2.1.3.12.** Take any action which Contractor or its Sub-Agents know or reasonably should know would result in University's non-compliance with Laws, including but not limited to U.S. and New York Laws and the laws of the country(ies) in which Contractor or its Sub-Agents operate;
- 2.1.3.13.** Engage in false or misleading advertising or recruitment practices;
- 2.1.3.14.** Make any inaccurate claims of association of University with any other education provider;
- 2.1.3.15.** Give any inaccurate information to a Prospective Student including with regard to acceptance into an Academic Program for which they applied or into any other Academic Program;
- 2.1.3.16.** Make any false or misleading comparisons between the University and any other education institution; or
- 2.1.3.17.** Handle any tuition or fees.

## **2.2. Marketing and Branding**

### **2.2.1. Marketing**

**2.2.1.1.** Contractor shall implement marketing initiatives solely in accordance with admission and program parameters set by University, and approved by University under this Agreement, to promote University to International Students. Subject to University's prior written approval, Contractor may contract with Sub-Agents to perform certain marketing and recruitment functions; provided that University is provided with reasonable prior written notice of any Sub-Agent creating a custom marketing campaign. Any approved Sub-Agents are required to sign a written contract with Contractor requiring compliance with the terms of this Agreement. For clarity, Contractor may contract with and pay commissions to Sub-Agents who represent International Students for the limited purpose of compensating such Sub-Agents for referring International Students. All marketing fees and commissions to Sub-Agents will be Contractor's responsibility.

### **2.2.2. Branding**

**2.2.2.1.** Any Sub-Agent Contractor employs to perform marketing or other services under this Agreement may only use the University Marks within the scope of the rights granted to Contractor by this Agreement. Contractor shall obtain University's prior written approval as to the form and content of each specific use of the University Marks and agrees to comply with University's branding and trademark use standards located at:

- [www.stonybrook.edu/brand](http://www.stonybrook.edu/brand); and
- [www.stonybrookmedicine.edu/communications/communications-tool-kit/home](http://www.stonybrookmedicine.edu/communications/communications-tool-kit/home).

**2.2.2.2.** University may approve templates and standard forms of use for the University Marks, provided, however, that any new or not previously approved use (for example in new collateral or in new types of promotions) of University Marks by Contractor or any and all Sub-Agents must have the prior approval of University. For clarity, the use of a previously approved template will not be considered a "specific use." To the extent that Contractor or its Sub-Agents are otherwise permitted to use the University Marks pursuant to this Agreement, Contractor and its Sub-Agents will observe at all times any then-current University use policies as to the representation of the University Marks, and their manner and disposition on documentation and products (whether in hard copy or electronic form).

**2.2.2.3.** Contractor hereby recognizes and acknowledges that University is the sole and exclusive owner of the University Marks and all rights therein and goodwill pertaining thereto. Any use of the University Marks will inure solely to the benefit of University and will not grant Contractor any right, title or interest in or to the University Marks. Notwithstanding anything herein to the contrary,

University may revoke or withdraw any or all approvals provided for in this Section at any time for any reason (or no reason) in its sole discretion. Upon expiration or earlier termination of this Agreement or University's revocation or withdrawal of any approval(s), Contractor shall immediately cease all use of University Marks and shall direct and ensure that any and all Sub-Agents immediately discontinue any and all use of such University Marks.

**2.2.3.** Any other service requested by University related to the Purpose of the Agreement.

**APPENDIX D**  
**PRIVACY AND SECURITY**

Revised: February 1, 2024

**1. Data Privacy**

a. Contractor will use data either supplied by University or to which Contractor has access to under the Agreement, including without limitation University Education Records (as defined below), Contractor University Data (as defined below) and Nonpublic Customer Information (as defined below), (collectively "SUNY Data") only for the purpose of fulfilling its duties under the Agreement for University's benefit and will not share SUNY Data with or disclose it to any third party without the prior written consent of University, except as required by the Agreement or as otherwise required by law. Contractor may disclose SUNY Data to the extent that disclosure is based on the good-faith written opinion of Contractor's legal counsel that disclosure is required by law or by order of a court or governmental agency. Contractor may exercise this right only if it has requested this disclosure and communicated the legal opinion in writing and in advance to the University. For clarity, SUNY Data does not include information provided directly to Contractor by Contractor-Identified Students or their representatives or that is not contained in an application to the University.

b. All SUNY Data shall be considered to be confidential and shall be treated as such by Contractor, its employees and subcontractors. Contractor shall implement and maintain appropriate policies and procedures to safeguard the confidentiality of SUNY Data in accordance with the Agreement. Contractor shall notify University promptly of any requests, from any source, for copies of or access to, or other disclosure of SUNY Data. If there is an actual or reasonably suspected accidental, unauthorized, impermissible, or unlawful disclosure, use, access, alteration, loss, or destruction of SUNY Data ("Information Security Incident"), Contractor shall notify the University in accordance with Section 9 of this Appendix and immediately take all appropriate steps to mitigate any potential harm or further accidental, unauthorized, impermissible, or unlawful disclosure, use, access, alteration, loss, or destruction of such SUNY Data. Upon University's request and at the cost of Contractor, Contractor shall also cooperate with and assist University with any notifications required by applicable laws or regulations or requested by University relating to any Information Security Incident, which may include without limitation notifying affected persons and relevant legal authorities on behalf of University. Upon the expiration or termination of the Agreement, and at any other time at the written request of the University, Contractor shall promptly return to the University all SUNY Data (and all copies of this information) that is in Contractor's or any of its subcontractor's possession or control, in a form useable and agreeable to University. If return of SUNY Data is not feasible, Contractor may, subject to University's written consent, destroy such information provided Contractor provides University with a certificate confirming date of destruction of such data.

c. SUNY Data must be stored, housed, processed, backed-up, archived and otherwise retained on systems physically located in the continental United States, unless an exception is explicitly approved in writing by University. This requirement applies to all of Contractor's subcontractors.

Signing of the Agreement is not considered explicit approval in writing by University.

d. Contractor will provide access to SUNY Data only to its employees and subcontractors who need to access the SUNY Data to fulfill Contractor's obligations under the Agreement.

e. Contractor will ensure that employees and subcontractors who perform work under the Agreement have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of the Agreement. Contractor's employees and subcontractors who may access SUNY Data must have executed agreements concerning access protection and data/software security that are consistent with the terms and conditions of the Agreement prior to being provided such access and which require them to comply with all University, Stony Brook University Hospital or State University of New York policies and procedures regarding data access, privacy and security, including those prohibiting or restricting remote access to University's systems and data.

f. Privacy Notification

- i) The authority to request the personal information described under Section 5.4 of **Appendix A** to the Agreement from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the New York State Tax Law. Disclosure of this information by the seller or lessor to SUNY or the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.
- ii) The personal information is requested by the purchasing unit of SUNY contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

## **2. Family Educational Rights and Privacy Act ("FERPA")**

a. Contractor may have access to Education Records as defined under the Family Educational Rights and Privacy Act ("FERPA") and its implementing regulations which includes any data provided to Contractor by University's students for the purpose of fulfilling the terms of the Agreement (collectively "University Education Records"). Contractor acknowledges that for the purposes of the Agreement it will be designated as a "school official" with "legitimate educational interests" in the University Education Records and Contractor shall abide by the limitations and requirements imposed on school officials under FERPA with respect to the University Education Records.

### **3. Data Security**

a. Contractor shall maintain, during the term of the Agreement, network security which includes: network firewall provisioning, intrusion detection, and regular third party vulnerability assessments, and share such assessment results with University. Contractor shall maintain network security that conforms to generally recognized "Industry Standards "and best practices and University security policies (<https://it.stonybrook.edu/policies>), procedures and requirements. Generally recognized industry standards include, but are not limited to, the current standards and benchmarks set forth and maintained by the Center for Internet Security (see <http://www.cisecurity.org>) or Payment Card Industry/Data Security Standards (PCI/DSS) - see <http://www.pcisecuritystandards.org/>

b. Contractor shall implement and use network management and maintenance applications and tools, appropriate intrusion prevention and detection, and data confidentiality / protection / encryption technologies for endpoints, servers and mobile devices. This must include mechanisms to identify vulnerabilities and apply security patches. Contractor will also physically and logically separate different customers' networks where applicable.

c. Contractor shall establish, maintain, and provide documentation of a continuous security program throughout the term of the Agreement ("Data Security Program"). The Data Security Program shall comply with PCI DSS requirements and all applicable legal and regulatory requirements for data protection. In addition, the Data Security Program will protect against any anticipated threats or hazards to the security or integrity of information stored on its servers and unauthorized access to or use of such information that could result in harm or inconvenience to the person who is the subject of such information. Contractor will review, at least annually, its Data Security Program and update and revise it as needed. The Contractor will provide information in the form requested by University, including but not limited to the completion of a security questionnaire and relevant diagrams and/or whitepapers. The Data Security Program must enable University (or its selected third party) to:

- i) Define the scope and boundaries, policies, and organizational structure of an information security management system.
- ii) Conduct periodic risk assessments to identify the specific threats to and vulnerabilities of University.
- iii) Implement appropriate mitigating controls and training programs, and manage resources.
- iv) Monitor and test the Data Security Program to ensure its effectiveness. Contractor shall review and adjust the Data Security Program in light of any assessed risks.

d. In no event shall Contractor's action or inaction result in any situation that is less secure than the greater of:

- i) The security that University provided as of the date of the Agreement.

- ii) The security that Contractor then provides for its own systems and data.
  - iii) Contractor will provide access of any third-party certifications held, including but not limited to SOC II, FedRAMP, ISO2700 or PCJ.
- e. Contractor shall ensure physical security of SUNY Data. This includes:
- i) Physical access to any equipment that contains any SUNY Data.
  - ii) Any mobile storage devices, laptops, or any other access on desktops that allow Contractor's employees or subcontractor's to access, transmit, or store. These devices must be encrypted and employ appropriate authentication mechanisms to assure access is limited to authorized individuals (e.g. two factor authentication.)
  - iii) Scenarios for moving and storing electronic data off-site in a secure manner.
  - iv) Physical Transport of Data- Contractor shall use reputable means to transport data. Deliveries must be made either via hand delivery by an employee of the Contractor, by reputable moving company complying with University specified security measures or by restricted delivery via courier (e.g., FedEx, United Parcel Service, United States Postal Service) with shipment tracking and receipt confirmation. This applies to transport between the Contractor's offices, to and from subcontractors, and to the University.
- f. Contractor shall, upon request:
- i) Complete and submit the appropriate version of the Higher Education Community Vendor Assessment Tool (HECVAT).
  - ii) Complete a SOC 2 Type 2 report, or equivalent, recognized information security audit report performed by an independent, certified 3rd party auditor covering the principles of Security, Availability, Confidentiality, and Privacy. The equivalent audit report must be based on a recognized information security standard.
  - iii) Address the ability to provide the same levels and types of security through multiple data access methods (e.g., Web, mobile devices, or network).

***Both the HECVAT and SOC 2 Type 2 report must be completed by the appropriate experts in this area.***

g. University will authorize, and Contractor will issue, any necessary information access mechanisms, including access identities (IDs) and passwords, to be used by Contractor and its employees and subcontractors. Contractor shall provide these individuals with only the minimum level of access necessary to perform the tasks and functions for which they are responsible under the Agreement. Contractor shall update, as necessary, a list of those employees and subcontractors of Contractor who have access to University's systems, software and SUNY Data, and the level of such access. Remote access for support to resources on-

premise at University will be granted only through methods approved by University. Access will be limited to named individuals and require logging and security controls that will assure access is limited to authorized individuals (e.g. two factor authentication). These logs will be provided to University upon request.

h. University and Contractor will collaborate on security monitoring and incident response, define points of contact on both sides, establish monitoring and response procedures, set escalation thresholds, and conduct training. Contractor shall, at the request of University, and, quarterly, provide University Information with a report of the incidents that it has identified and take measures to resolve.

#### **4. Data Portability**

a. Contractor agrees that University owns SUNY Data and that Contractor will take all steps and actions, at the direction of University, that are necessary and reasonable to facilitate and complete the orderly, efficient, expedient and professional transfer of the Services and SUNY Data, in whole or in part, in the format and on the media requested during the Term and/or upon the expiration or termination of the Agreement to University, a University Institution, or third-party that University may select. The cost of any such transfer services shall be borne by Contractor.

#### **5. Contractor Personnel**

a. If consistent with Contractor's employment policies, Contractor shall conduct a drug screening and background check on all individuals that Contractor provides access to SUNY Data and review the results of such screening and check of each person to verify that the person meets the Contractor standards for employment.

#### **6. New York Information Breach and Notification Requirements**

a. Contractor shall use commercially reasonable efforts to maintain the security of private information (as defined in the New York State Information Security Breach and Notification Act, as amended ("ISBNA") (General Business Law § 889-aa, § 889-bb; State Technology Law § 208) that it creates, receives, maintains or transmits on behalf of the University and to prevent unauthorized use and/or disclosure of that private information; and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic private information that it creates, receives, maintains or transmits on behalf of the University ("Contractor University Data"). Contractor shall disclose to the University pursuant to the ISBNA, and any other applicable law, any breach of the security of a system involving Contractor University Data following discovery or notification of the breach in the system as to any resident of New York State whose private information was, or is reasonably believed to have been acquired by a person without valid authorization ("Security Incidents"). The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the system. Contractor shall be liable

for the costs associated with such breach if caused by the Contractor's, or that of its employees or subcontractors, negligent or willful acts or omissions, including indemnifying the University for the cost of notifying individuals, in the event of such a breach.

## **7. Gramm-Leach-Bliley Act**

a. Pursuant to the Gramm-Leach-Bliley Act (P.L 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314) ("GLBA"), and to the extent Contractor is a financial institution or service provider of University under these regulations with respect to student or customer information, Contractor and its agents and employees will comply with the Safeguards Rule including the requirement to implement and maintain a written Information Security Program ("Program") in order to protect such nonpublic customer information (any record containing nonpublic personal information as defined in 16 CFR §313.3(n), whether in paper, electronic, or other form that is handled or maintained by or on behalf of University or its affiliates (16 CFR §314.2)) ("Nonpublic Customer Information"). Contractor shall not use, provide, trade, give away, barter, lend, sell or otherwise disclose any such Nonpublic Customer Information without University's prior written consent. If Contractor subcontracts with a third party for any of the services that it is required to undertake in accordance with the Agreement, Contractor must ensure that such third parties implement practices that protect such Nonpublic Customer Information the subcontractor receives, maintains, processes or otherwise is permitted to access in accordance with the terms of the Agreement.

## **8. European Union ("EU") General Data Protection Regulation ("GDPR"), People's Republic of China ("PRC") Personal Information Protection Law ("PIPL"), and other Data Privacy Laws**

a. Contractor warrants any information relating to an identified or identifiable natural person ("Personal Information" or "PI") that Contractor uses, collects, retains, stores, secures, discloses, transfers, disposes of, or otherwise processes in relation to the products and services subject to the Agreement will be processed in compliance with any applicable laws, regulations, and other legal requirements relating to (a) privacy and information security; or (b) the use, collection, retention, storage, security, disclosure, transfer, disposal, and other processing of Personal Information ("PI Protection Requirements"), which may include, but is not limited to Regulation (EU) 2016/679 (the "EEA General Data Protection Regulation" or "GDPR"), and the People's Republic of China Personal Information Protection Law ("PIPL"), and Contractor shall, upon mutual agreement of the Parties, execute any amendments or addendums to the Agreement necessary for each of the Parties to maintain compliance with PI Protection Requirements. Upon request, Contractor will make available reasonable information necessary to demonstrate compliance with the obligations of any PI Protection Requirements. The Parties will cooperate in good faith to comply with PI Protection Requirements. This includes but is not limited to obtaining individuals' consent when such consent is required under PI Protection Requirements and signing and complying with all documents and agreements reasonably requested by either Party pursuant to PI Protection Requirements, including but not limited to any data processing agreements.

b. If data containing Personal Information must be transmitted by one Party to the other Party in furtherance of the activities provided for in the Agreement, both Parties agree to be responsible

for compliance with regard to such Personal Information relative to their own respective obligations in accordance with PI Protection Requirements, including but not limited to: 1) adopting and maintaining compliant privacy policies; 2) identifying a legitimate legal basis for handling the Personal Information; 3) entering into additional data handling addendum(s) as necessary to address cross-border transfer obligations under PI Protection Requirements; and 4) establishing internal organizational policies, conducting employee trainings, and engaging in regular privacy audits.

c. Contractor is, and at all prior times was, and for all times during the term of the Agreement, will remain, in material compliance with all PI Protection Requirements. To ensure compliance with the PI Protection Requirements, Contractor has in place, complies with, and takes appropriate steps reasonably designed to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, processing, disclosure, handling, and analysis of Personal Information. Contractor further certifies that neither it nor any of its Sub-Agents: (i) has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the PI Protection Requirements, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any PI Protection Requirements; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any PI Protection Requirements.

d. Contractor represents that it has the ability to process data on behalf of its customers in accordance with the GDPR and PIPL. If during the term of the Agreement, the Parties contemplate exchanging information that would be subject to the GDPR or PIPL, prior to sharing any such information, the Parties shall discuss in good faith a roadmap to comply with the GDPR and PIPL and shall negotiate in good faith any additional required terms and conditions (e.g., a Personal Data Processing Agreement (“DPA”)).

e. Contractor warrants the Services subject to the Agreement are not subject to the California Consumer Privacy Act of 2018, as amended (Cal. Civ. Code §§ 1798.100 to 1798.199) (“CCPA”). Following the signing of the Agreement, if any Services subject to the Agreement become subject to the CCPA, Contractor will immediately notify University and will take all actions necessary to fully comply with the CCPA, including without limitation the signing of additional data handling addendums to the Agreement.

## **9. Reporting and Recordkeeping**

a. In addition to the reporting requirements set forth in Section 6 of this Appendix, Contractor shall, without undue delay and no later than twenty-four (24) hours of discovery, report to University any Information Security Incident. To the extent such information is known, Contractor's report shall identify at a minimum: (i) the nature of the Information Security Incident, (ii) the categories of SUNY Data involved, (iii) the causes of the Information Security Incident and possible harm caused by the Information Security Incident, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the Information Security Incident, (v) what remedial measures affected individuals can adopt to mitigate harm, (vi) what corrective action Contractor

has taken or shall take to prevent future similar Information Security Incidents; and (vii) the contact information of the person or team responsible for handling the Information Security Incident. Contractor shall provide such other information, including a written report, as reasonably requested by University. Contractor shall document and retain all facts relating to an Information Security Incident and its impact, including without limitation all remedial measures taken.

## **10. Enforcement**

a. Contractor shall be responsible for maintaining and ensuring the confidentiality and security of SUNY Data. Contractor's failure to comply with the provisions of this Appendix or that of its employees or subcontractor may result in University restricting offending individuals from access to University computer systems or SUNY Data, including Education Records, or immediately terminating the Agreement.

b. Additionally, to the extent permissible under law, the University may seek specific enforcement of Contractor's obligation of the foregoing sections, if Contractor or its employees or subcontractors breach any obligation set forth therein. In addition, Contractor shall indemnify and hold harmless the University for all damages, claims, losses, charges, and costs and expenses, including, but not limited to, counsel fees and disbursement, arising out of, related to or in connection with any such breach.