



The University of Phoenix, Inc.

PURCHASE ORDER TERMS AND CONDITIONS

1. AGREEMENT. Supplier and UOPX agree that upon acceptance of the Purchase Order by Supplier the terms and conditions outlined herein shall constitute a binding "Agreement" between the parties for the purchase of products and/or services and any deliverables set forth in the Purchase Order (hereinafter "Products/Services and Deliverables") unless the parties have otherwise entered into a Master Agreement in which case the Master Agreement shall control.

2. PAYMENT TERMS.

(a) **Invoice Terms.** Unless stated otherwise in a Statement of Work or on the Purchase Order, Supplier shall issue invoices to Ape-Invoices@phoenix.edu with a copy to the party that has entered into this Agreement with UOPX on a monthly basis. Invoices shall contain sufficient detailed descriptions of activities that have or shall be performed in the billing period, with supporting data and reports, as applicable, and such other information, all as reasonably required by UOPX for its internal accounting purposes and specified by UOPX to Supplier from time to time. Unless stated otherwise in the Purchase Order, UOPX will pay all undisputed invoices within sixty (60) calendar days of UOPX's receipt of such invoice. All Products/Services and/or Deliverables must be delivered and/or fully completed and accepted prior to payment. UOPX may setoff monies owed to Supplier against monies due from Supplier under any other contract(s) between UOPX or any entity that wholly or partially controls, is controlled by, or is in common control with UOPX ("UOPX Affiliate") and Supplier and its affiliated companies. UOPX may, at its discretion, make any payment required under this Agreement via credit card or other form of electronic payment.

(b) **Taxes.** Supplier shall pay, satisfy and perform, and hold UOPX and its affiliates, their respective directors, officers, employees, shareholders and agents and all of their respective successors and permitted assigns harmless from, all related taxes and other governmentally imposed fees and charges including, but not limited to, all federal, state and local taxes, levies, fees and assessments; provided, however, (i) Within 90 days of the Invoice Date, Company shall add applicable sales and use taxes to all invoices where the Services, Products or Deliverables would require Company to collect and remit to any state, sales or use tax; and (ii) UOPX shall pay, or reimburse the Company for all such taxes set forth in (i), as invoiced by the Company. Company may be relieved of its obligation to

collect and remit sales and use taxes upon receipt of a valid exemption certificate. Notwithstanding anything to the contrary herein, UOPX shall not be liable for any taxes based on Company's net income, gross receipts, or equity.

3. PRICE WARRANTY. Notwithstanding any other provision of this Agreement, Supplier represents and warrants that the prices for Products/Services, or sold to UOPX hereunder will be the lowest prices at which such similar Products/Services and/or Deliverables are legally sold by Supplier to other customers under conditions reasonably similar to those covered by this Agreement. Supplier warrants that prices shown in this Agreement shall be complete and no additional charges or charges of any type shall be added without UOPX's express written consent.

4. TERMINATION. This Agreement including the Purchase Order may be terminated: (i) in whole or in part, without cause, by UOPX by providing thirty (30) calendar days written notice to Supplier; (ii) immediately by UOPX upon any violation of the law by Supplier; (iii) immediately by UOPX if Supplier breaches this Agreement or fails to fulfill its obligations in accordance with the terms of this Agreement, and such failure continues for ten (10) business days after notice is provided by UOPX to Supplier; (iv) upon any insolvency or suspension of Supplier's operations or any petitions filed or proceeding made by or against Supplier under any state, federal or other applicable law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors or other similar proceedings; or (v) as otherwise provided herein. Upon termination of the Agreement, UOPX shall receive a refund for any prepaid Products/Services and/or Deliverables not provided by Supplier or not accepted by UOPX.

5. ACCEPTANCE. UOPX shall have thirty (30) calendar days following receipt to review Products/Services and/or any Deliverables set forth in the Purchase Order provided by Supplier hereunder. If during such thirty (30) calendar day period UOPX determines, in its sole and absolute discretion, that certain Products/ are not acceptable to it, UOPX may notify Supplier of such non-acceptance in writing setting forth the reasons that such Products/Services are not acceptable to UOPX. Within five (5) business days of Supplier's receipt of such notice, Supplier shall take all reasonable steps necessary to make such Products/Services and/or Deliverables acceptable pursuant to the details provided in such notice by UOPX. If Supplier is unable to

make such Products/Services and/or Deliverables acceptable to UOPX, in its sole and absolute discretion, within the five (5) business day period, UOPX may reject such Products/ Services and/or Deliverables by providing Supplier with written notice of rejection. Within thirty (30) calendar days of Supplier's receipt of UOPX's written notice of rejection, Supplier shall provide UOPX with a refund of the fees or other consideration paid for such Products/Services and/or Deliverables. Prior payment does not constitute acceptance of the Products/Services and/or Deliverables nor does it impair any rights or remedies of UOPX for nonconforming Products/Services and/or Deliverables.

6. DELIVERY. Unless otherwise set forth in the Purchase Order Supplier shall pay for all delivery costs, including but not limited to, packaging, labeling and shipping (i.e. FOB Destination, freight prepaid). Title and risk of loss in and to the, if any, shall pass from Supplier to UOPX upon delivery and acceptance as set forth in Section 5.

7. DELIVERABLES. All Deliverables, unless UOPX has not paid the Fees due for such Deliverable according to the terms of this Agreement, shall be and remain the sole and exclusive property of UOPX and UOPX shall exclusively retain all ownership and intellectual property rights therein. If Supplier is deemed to retain any intellectual property rights in any Deliverables, or if any Deliverable is not deemed a "work for hire" by operation of law, Supplier hereby irrevocably assigns and UOPX hereby accepts all rights, title and interests in any intellectual property rights in such Deliverable without further consideration. Supplier acknowledges, and shall cause any of its Personnel to acknowledge, that UOPX and its successors and permitted assigns, shall have the right to obtain and hold in its own name any intellectual property rights in and to the Deliverables. Supplier agrees to execute, and shall cause any of its employees, contractors and agents to execute as applicable, any documents or, at UOPX's sole reasonable cost, take any other actions as may reasonably be necessary, or as UOPX may reasonably request, to perfect UOPX's intellectual property rights in any such Deliverables. At any time, UOPX may request and Supplier shall promptly provide UOPX with copies on industry standard media of all executable code, object code, source code and documentation for any and all software included as a Deliverable, whether completed or works-in-progress. Supplier acknowledges that there are, and may be, future rights that UOPX may otherwise become entitled to with respect to the Deliverables that do not yet exist, as well as new uses, media, and means and forms of exploitation throughout the world exploiting current or future technology yet to be developed, and Supplier specifically intends that the foregoing assignment of rights to UOPX and it hereby does include all such now known and unknown uses, media, and means and forms of exploitation throughout the world.

8. WARRANTIES.

(a) Supplier represents and warrants that all Products/Services and Deliverables shall be new, free from defects, of good material and workmanship, will be merchantable, will be safe and appropriate for the purposes for which goods and deliverables of that kind are normally used, and clear of all liens and encumbrances, and shall strictly comply with the terms of the Agreement and any applicable Purchase Orders, or other documentation. Supplier acknowledges and expressly agrees that it has been informed of UOPX's intended use of the Product/Services and/or Deliverables, and Supplier further represents and warrants that the items furnished hereunder are suited and appropriate for such particular use. Supplier shall extend all warranties that Supplier receives from its suppliers to UOPX and UOPX Affiliates and their respective assigns and successors.

(b) All Products/Services and Deliverables shall be performed and/or delivered in a professional and workmanlike manner in accordance with generally accepted industry practices, and if unacceptable to UOPX, shall be re-performed to the satisfaction of UOPX in accordance with the acceptance procedures set forth in this Agreement. All personnel of the Supplier shall have the necessary training and expertise and be qualified to provide the Services and/or Deliverables under this Agreement.

(c) Additionally, Supplier further expressly represents and warrants that: (i) it has the authority and the right to enter into this Agreement; (ii) each of its employees, agents or representatives assigned to provide Services under this Agreement to UOPX or to an UOPX Affiliate shall have the proper skill, training and background so as to be able to perform such Services in a competent and professional manner; (iii) all Services shall be performed in a manner compatible with UOPX's business operations; (iv) Supplier shall cause the Services to be performed in accordance with this Agreement and generally accepted industry practices; (v) neither the Products/ Services nor the Deliverables shall be in violation of any applicable law, rule, ordinance and regulation, and Supplier shall have obtained all licenses or permits required to comply with such laws, rules, ordinances and regulations; and (vi) neither the Products/Services nor the Deliverables shall violate or in any way infringe upon the rights of third parties, including, but not limited to: property, contractual, employment, privacy rights or any intellectual property rights. These warranties are in addition to all warranties contained under the law and all warranties shall survive any inspection, delivery, acceptance or payment by UOPX.

(d) UOPX shall be entitled to all rights and remedies available at law, including but not limited to credit, replacement or repair of defective Products and Deliverables at UOPX's option, costs of removal of Products and Deliverables from any component, assembly or system into which such Products and Deliverables may

have been incorporated, and cost of return of the Products and Deliverables. Supplier shall reimburse UOPX for any incidental and consequential damages caused by such nonconforming Products and Deliverables. NO ATTEMPT BY SUPPLIER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR SUPPLIER'S LIABILITY OR CONSEQUENTIAL DAMAGES SHALL BE OF ANY FORCE OR EFFECT.

9. CONFIDENTIALITY.

(a) "Confidential Information" means all confidential and proprietary information of UOPX and UOPX Affiliates, disclosed, prior to the execution of this Agreement or after, whether orally or in writing, including, but not limited to, the following: terms and conditions of this Agreement (including pricing and other terms set forth herein), Deliverables, customer information and data, Student Information, Personal Information, financial information, any information pertaining to the business organization, operations or plans, business records and plans, marketing strategies, cost, discounts, product design information and technical information. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to UOPX; (ii) was lawfully known to Supplier prior to its disclosure by UOPX; or (iii) is lawfully received from a third party without breach of any obligation owed to UOPX. "Personal Information" means any information that Supplier obtains in any manner from any source during or in connection with its performance of this Agreement that concerns any of UOPX's or any UOPX Affiliate's prospective, former and existing students, customers or employees. Personal Information includes, without limitation, names, addresses, telephone numbers, e-mail addresses, social security numbers, credit card numbers, call-detail information, student records, purchase information, product and service usage information, account information, credit information, demographic and any other personally identifiable information.

(b) All Confidential Information will be the sole and exclusive property of UOPX, and Supplier will not have any ownership interest in such Confidential Information or engage in any derivative uses thereof. Supplier shall: (a) use at least the same degree of care to prevent unauthorized use and disclosure of such Confidential Information as Supplier uses with respect to its own confidential information of a similar nature, provided that in all events, the manner and method used to prevent unauthorized use and disclosure is commercially reasonable in the circumstances; (b) use such Confidential Information only in performance of its obligations under this Agreement; and (c) not disclose or grant access to such Confidential Information to any third party (including representatives, counsel and consultants) without the express prior written consent of UOPX. Supplier shall provide prompt written notice to UOPX of any actual or potential unauthorized disclosure or unauthorized use of the Confidential

Information and shall assist UOPX in the remedying to prevent and/or stop the disclosure or use of the Confidential Information.

(c) In the event Supplier becomes legally compelled (by depositions, interrogatory, subpoena, civil investigative demand, similar process or otherwise) to disclose any Confidential Information, Supplier shall provide UOPX with prompt prior written notice of such requirement so that UOPX may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, or if UOPX waives in writing compliance with the terms hereof, Supplier agrees to furnish only that portion of the information which Supplier is advised by written opinion of counsel is legally required and to exercise reasonable efforts to obtain confidential treatment of such information.

(d) Supplier shall return to UOPX, or at UOPX's option, destroy (and certify in writing such return or destruction) any and all Confidential Information upon termination or expiration of this Agreement and upon request of UOPX. This Section shall survive termination or expiration of this Agreement.

(e) Supplier understands and acknowledges that the Confidential Information has been developed or obtained by UOPX through the investment of significant time, effort and expense, and that the Confidential Information is a valuable, special and unique asset of UOPX which provides a significant market advantage. Supplier further acknowledges and agrees that due to the unique nature of the Confidential Information, there can be no adequate remedy at law for any breach of Supplier's obligations hereunder and that any such breach may result in irreparable harm to UOPX, and therefore, Supplier agrees that upon any such breach or any threat thereof, UOPX may immediately obtain injunctive relief against such breach or threatened breach. Accordingly, UOPX shall be entitled to appropriate equitable relief from a court of competent jurisdiction in addition to whatever remedies UOPX might have at law. Any breach of this Section 8 shall constitute a material breach of this Agreement.

(f) Any breach of this Section entitled "CONFIDENTIALITY" shall constitute a material breach of this Agreement. Supplier recognizes and agrees that nothing contained in this Agreement shall be construed as UOPX or UOPX Affiliates granting Supplier any ownership, intellectual property or other rights by license or otherwise to any Confidential Information disclosed by UOPX pursuant to this Agreement. The acts or omissions of Supplier and anyone with which it is associated, including, but not limited to, its Personnel and their respective employees, related to Confidential Information shall be deemed to be the acts or omissions of Supplier.

(g) Without limiting the foregoing, with respect to Confidential Information consisting of Personal

Information, including Student Information, Supplier shall comply in all regards with the Privacy and Data Security obligations set forth in Exhibit A which is incorporated by reference.

(h) In the event that UOPX requires Supplier to comply with the requirements of a UOPX initiated legal hold to preserve relevant Confidential Information in Supplier's possession or control for the purposes of anticipated litigation ("**UOPX Legal Hold**"), whether through access or preservation of such Confidential Information, UOPX shall provide Supplier with notice of (a) the UOPX Legal Hold, (b) the specific Confidential Information to which the UOPX Legal Hold applies and (c) the time for the UOPX Legal Hold to be complied with by Supplier. Supplier shall comply with the requirements of such notice upon receipt.

10. COMPLIANCE WITH LAWS AND POLICIES.

(a) Supplier will comply with all applicable current and future local, state, and federal laws, regulations and ordinances with respect to the Products/Services and Deliverables. In addition to compliance with the provisions of this Agreement, Supplier shall also comply with all laws applicable to Supplier related to the use of the Personal Information, as well as UOPX's written confidentiality, privacy and security policies. Compliance with such laws and policies shall not otherwise relieve Supplier of its duties with respect to Personal Information. Any violation of this Section shall be deemed a material breach of the Agreement by Supplier entitling UOPX to immediate injunctive relief and constituting grounds for immediate termination of this Agreement by UOPX, among other remedies.

(b) **Title IV Compliance.** Supplier represents that it has never participated as an institution or third-party servicer in any federal student aid program authorized under the Higher Education Act of 1965, as amended. Supplier upon its knowledge and belief represents that neither it, nor any of its employees, directors, officers or subcontractors has been: (x) convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or (y) administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds. Supplier agrees to promptly notify UOPX in writing if there is any change in its representations in (x) and (y) in the immediately preceding sentence and to promptly reaffirm these representations to UOPX upon request. Supplier shall comply with the current and future requirements of 34 C.F.R. §§ 668 Subpart F (Misrepresentation) which prohibits any false, erroneous or misleading statements by Supplier, its employees or agents about UOPX. Any violation of this Subsection shall be deemed a material breach of the Agreement by Supplier entitling UOPX to immediate injunctive relief and constituting grounds for immediate termination of this Agreement by UOPX, among other remedies.

(c) **Non-Discrimination.** Each party agrees not to discriminate against any employee or applicant for employment on the basis of any category or characteristic protected by applicable federal, state, or local law. The provisions of 41 C.F.R. Section 60-1.4(a), and 29 C.F.R. Part 471, Appendix A to Subpart A are, if applicable, incorporated by reference. In addition:

(i) **Each party shall abide by the requirements of 41 C.F.R. §60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

(ii) **Each party shall abide by the requirements of 41 C.F.R. §60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

11. INDEMNIFICATION.

(a) Supplier shall defend, indemnify and hold harmless UOPX Indemnified Parties, from and against any and all suits, claims, actions, causes of actions, judgments, damages, liabilities, losses, damage to property or for injury to or death of any person, costs and expenses (including without limitation court costs, litigation expenses and reasonable attorneys' fees) (collectively referred to as "Claims") asserted against UOPX Indemnified Parties arising out of or from, or alleged to have arisen from: (i) the acts or omissions (whether negligent, reckless, intentional or otherwise) of Supplier, its employees, agents, contractors or subcontractors; (ii) any misrepresentation, omission, breach of warranty, breach of any covenant or other breach or default by Supplier under this Agreement; (iii) without limitation any infringement of third party rights or violation or breach of confidentiality as stated herein; and (iv) any claim by any employee of Supplier against UOPX or any UOPX Affiliate claiming any employment benefit of UOPX or any UOPX Affiliate.

(b) **Infringement Indemnification.** Notwithstanding any of the other indemnities or releases contained in this Agreement, Supplier shall indemnify, defend and hold the UOPX Indemnified Parties harmless from and against any Claims asserted by or arising in favor of any person or entity for or as a result of infringement or alleged infringement of any patents, copyrights or trademarks, or misappropriation or misuse of any trade secrets or other confidential information, based on or related to the Products, Services, Deliverables or Supplier, its employees, agents, contractors or subcontractors, or use or application of any processes,

compositions, equipment, machines, articles of manufacture or computer software. In connection therewith, Supplier shall at its sole expense, promptly undertake to procure for UOPX the right to continue using any Product, Service or Deliverable subject to such Claims. If, however, such right cannot be procured on terms and conditions reasonably acceptable to UOPX, Supplier shall, at its sole expense but at UOPX's discretion: (i) promptly modify such Product, Service and/or Deliverable to render it non-infringing but functionally equivalent; (ii) promptly substitute such Product, Service and/or Deliverable with a replacement that is non-infringing but is functionally equivalent; or (iii) refund to UOPX the sums actually paid for the Product, Service and/or Deliverable and UOPX shall cease to use same.

12. INSURANCE. Supplier, at its own cost and expense, shall maintain for the duration of this Agreement the following insurance: (a) Workers' Compensation for all its employees as prescribed by law; (b) Employers' Liability with limits of not less than \$1.0 million per occurrence and \$1.0 million in the aggregate that includes coverage for accidents and disease; (c) Commercial General Liability Insurance with limits of not less than \$1.0 million per occurrence, and \$3.0 million in the general aggregate that includes bodily injury, property damage, advertising injury, employee liability, products and completed operations and contractual liability coverage naming UOPX, UOPX Affiliates and each of their officers, directors, officials, agents and employees (collectively, the "UOPX Insured Parties") as additional insureds and (d) such other policies and coverage as is prudent for a Supplier in Supplier's industry. If said Commercial General Liability policy does not automatically cover Supplier's contractual liability under this Agreement, Supplier shall obtain a specific endorsement adding such coverage. With respect to the foregoing insurance policies in which the UOPX Insured Parties are named as additional insureds, the UOPX Insured Parties shall be additional insureds to the full limits of liability purchased by Supplier even if such limits of liability are in excess of those required by this Agreement. Supplier's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Supplier's procurement of such insurance shall in no way affect the indemnification or warranty provisions set forth in this Agreement, but shall be additional security therefor.

13. RELATIONSHIP. Supplier acknowledges and agrees that the relationship with UOPX is that of an independent contractor and nothing in this Agreement or related to Supplier's performance of any obligation hereunder shall be construed to create an employee relationship between UOPX and Supplier or any of Supplier's employees.

14. CONFLICT OF INTEREST. Supplier shall disclose to UOPX any relationships it has with any employee, officer or director of UOPX or an UOPX Affiliate whereby the employee, officer or director may directly or indirectly receive any financial or other benefit from Supplier,

whether as a result of this Agreement or otherwise (a "Conflict of Interest"). Based upon such information, UOPX may in its sole discretion, accept or reject the Agreement. Additionally, if Supplier becomes aware of any Conflict of Interest during the term of this Agreement, Supplier shall disclose such relationship to UOPX immediately, and in no event more than fifteen (15) calendar days of learning about such relationship. UOPX may in its sole discretion, approve such relationship in writing or may terminate this Agreement upon one (1) business day written notice.

15. GRATUITY. Under UOPX's and UOPX Affiliate's Gift and Entertainment Policy, UOPX and UOPX Affiliates' employees, officers, directors, agents and representatives and their spouses, family members and relatives are prohibited from accepting, and Supplier is prohibited from offering, giving or agreeing to give, any gifts, gratuities, favors or advantages from Supplier which could act as an inducement or a reward, except for insignificant items of low value such as business lunches and advertising items. Supplier agrees not to provide such persons with such gifts, gratuities, favors or advantages. Further, Supplier shall not enter into this Agreement if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by any UOPX or UOPX Affiliate by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to UOPX before execution of this Agreement. Supplier further agrees that any violation of this provision shall be considered a material breach and in such event, UOPX may immediately terminate this Agreement by written notice in its sole discretion and any such termination shall be without prejudice to any right or remedy that has already accrued or subsequently accrues to UOPX or any UOPX Affiliate.

16. GOVERNING LAW AND FORUM. The laws of the State of Arizona, without giving effect to its conflicts of law principles or rules, shall govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Superior Court of Maricopa County, in the State of Arizona or in the United States District Court for the District of Arizona. For the purposes of all legal actions and proceedings arising out of or relating to this Agreement, each party to this Agreement submits to the exclusive jurisdiction of: (a) any court of the County of Maricopa County, Arizona and its appellate courts; and (b) the United States District Court for the District of Arizona and its appellate courts.

17. GENERAL PROVISIONS.

(a) **Assignment.** This Agreement may not be assigned, nor may performance be delegated, in whole or in part, by Supplier without the advance written consent of UOPX.

Any attempt by Supplier to assign and/or delegate its performance under this Agreement, in whole or in part, in violation of this provision is void.

(b) **Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

(c) **Entire Agreement.** This is the entire agreement between the parties relating to the subject matter herein and supersedes any prior representations or agreements, oral or written, and all other communications. This Agreement will not be varied except in writing, signed by the parties. Except as otherwise explicitly provided in this Agreement, the provisions of this Agreement shall control and prevail over any conflicting provisions in any SOW, proposal, purchase order, acceptance notice or other document attached hereto and/or related to the subject matter of this Agreement.

(d) **Interpretations.** The parties agree that the terms and conditions of this Agreement were mutually negotiated. Thus, the rule of construction that any ambiguity shall apply against the drafter is not applicable and will not apply to this Agreement.

(e) **No Waiver.** The parties may not waive any provision of this Agreement in whole or in part except pursuant to a writing executed by both parties. Either party's failure to enforce any of the provisions of this Agreement will not be construed to be a continuing waiver of any provisions hereunder, nor will the either party's failure to strictly enforce any provision of this Agreement prejudice the right of that party to take any action in the future to enforce any provisions hereunder.

(f) **Publicity.** Except as specifically authorized in writing by UOPX or as required by law (which requirement shall be described in detail to UOPX in writing at least five (5) business days prior to the date of scheduled disclosure), Supplier shall not publicize this Agreement or the transactions contemplated herein, nor shall Supplier use in any manner UOPX's or any UOPX Affiliate's name, trademark, service mark, service name or symbol in any advertising or promotion.

(g) **Severability.** If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a competent court or tribunal, the validity and enforceability of the remaining provisions will not be affected and, in lieu of such illegal, invalid or unenforceable provision, there will be added as part of this Agreement one or more provisions as similar in terms and effect as may be legal, valid and enforceable under applicable law.

(h) **Notices.** Notices permitted or required under this Agreement shall be deemed to have been given on the date actually received when personally delivered or three (3) business days after mailing if mailed by registered or certified U.S. mail, return receipt requested.

(i) **Binding Nature.** All terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

(j) **Recovery of costs.** In addition to any other remedies available to UOPX, including those described in this Agreement, UOPX shall be entitled to recover its costs and expenses, including its actual attorney fees, incurred in enforcing the terms and conditions set forth herein.

EXHIBIT A

PRIVACY AND DATA SECURITY

This Privacy and Data Security Schedule, including any Appendix hereto (the “**Privacy and Data Security Schedule**”) forms part of the Agreement. Capitalized terms used in this Privacy and Data Security Schedule that are not defined herein shall have the same meanings as in the underlying Agreement.

The parties wish to set forth in this Privacy and Data Security Schedule the additional confidentiality, security, and privacy requirements with respect to Personal Information (as defined below) Processed by Supplier in performing such Services to ensure that such Processing by Supplier is compliant with Applicable Privacy Laws.

1. **Definitions.** Capitalized terms not otherwise defined herein have the following meanings and shall be construed in a manner with definitions set forth in the Agreement:
 - 1.1. “**Applicable Privacy Law**” means the relevant data protection and privacy law to which UOPX is subject, and any guidance or statutory codes of practice issued by the relevant Privacy Authority (including but not limited to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 C.F.R. Part 99, as amended (“FERPA”) and the California Consumer Privacy Act of 2018, as amended (“CCPA)).
 - 1.2. “**Data Security Incident**” means any (1) theft or loss of, or unauthorized or unlawful collection, disclosure, use, alteration, destruction of, or access to, Processing or other compromise of Personal Information, and/or any (2) compromise of Supplier (or its Subcontractor’s) network, server, site or system that contains or otherwise Processes any Personal Information.
 - 1.3. “**Industry Standards**” means (a) the standards, practices and guidelines issued by the National Institute for Standards and Technology in NIST 800-171, and/or other applicable industry standards for information security and data privacy, as each may be updated, amended or replaced by the applicable industry body.
 - 1.4. “**Personal Information**” means any information relating to an identified or identifiable natural person that is within the scope of the Applicable Privacy Law which Supplier may Process from time to time in connection with its performance of Services provided to UOPX under this Agreement.
 - 1.5. “**Privacy Authority**” means the relevant supervisory authority with responsibility for privacy and data protection matters in the jurisdiction of UOPX.
 - 1.6. “**Process**,” “**Processed**” or “**Processing**” means any operation in relation to Personal Information irrespective of the purposes and means applied including, without limitation, access, collection, retention, storage, transfer, disclosure, use, copying, recording, organizing, hosting, transmitting, providing, disclosing, making available, generation, disposal, erasure, destruction, and any other operation.
 - 1.7. “**Student Information**” means any student or alumni information of UOPX or an UOPX Affiliate, including but not limited to student or alumni names, email addresses, identification code or other educational or financial records. Student Information shall be deemed Personal Information.
2. **Compliance with UOPX’s Information Security Standards.** Supplier shall comply with UOPX’s Third Party Information Security Standards located at <http://www.phoenix.edu/Infosec3rdpartystandard> as amended from time to time in UOPX’s sole discretion, with respect to any and all access, storage, and use of UOPX information technology (“IT”) assets. IT assets include, but are not limited to: (i) information, such as databases, hosted data, computer files, documentation, manuals, plans and audit logs; (ii) software, such as application and system software; and (iii) physical equipment, such as computer hardware, peripheral devices and communication. Supplier will promptly notify UOPX if it becomes aware of any violation of this Section or has any reason to believe that a violation has occurred or is likely to occur.
3. **FERPA.** If Supplier, its employees or agents are provided access to any Student Information, Supplier acknowledges that it is subject to and will fully comply with the privacy regulations outlined in the Family Educational Rights and Privacy

Act, 20 U.S.C. § 1232g; 34 C.F.R. Part 99, as amended (“FERPA”), for the handling of such information. Supplier will not disclose or use any Student Information except to the extent necessary to carry out its obligations under this Agreement and as permitted by FERPA. Supplier shall be subject to and agrees to abide by UOPX’s established and published FERPA policies. The parties agree that Supplier has legitimate educational interests in access to all Student Information because such access is relevant and necessary to carry out the purposes, Services, and functions under this Agreement and that such access shall be subject to and limited by 34 C.F.R. 99.31(a)(l)(B). Consultant’s use and maintenance of any Student Information remains subject to the direct control of Supplier. Supplier shall not disclose, release, or allow access to the Student Information to any third party, except as set forth in Section 5 of this Addendum, or as required by judicial order or a lawfully issued subpoena. Any disclosure of Student Information required by judicial order or a lawfully issued subpoena shall be governed by the terms of the applicable Agreement. Supplier shall destroy all Student Information provided to it by UOPX in connection with its performance the Services, promptly following completion of use of such data, and in any event within ten (10) days of receipt of a request from UOPX and/or of termination of this Agreement; and provide a written certificate, signed by an authorized representative of Supplier, confirming that it has deleted all Student Information from its systems, destroyed any paper or other copies of any such data, and has not retained in any form any such data.

4. **Processing of Data by Supplier.** In the course of providing Services to UOPX under the Agreement, Supplier represents and warrants as follows:
 - 4.1. Supplier will only Process Personal Information on behalf of and under the instruction of UOPX, and in compliance with UOPX’s written instructions and the obligations set forth in the Agreement and this Privacy and Data Security Schedule.
 - 4.2. Personal Information shall not be used by Supplier other than as necessary for Supplier’s performance under the Agreement and solely in connection with providing the Services and the performance of Supplier’s obligations under the Agreement.
 - 4.3. Without UOPX approval (in its sole discretion), Personal Information shall not be (i) disclosed, sold, assigned, leased or otherwise provided to third parties by Supplier or (ii) commercially exploited by or on behalf of Supplier.
 - 4.4. As between UOPX and Supplier, all Personal Information is, or shall be, and shall remain the property of UOPX and shall be deemed Confidential Information of UOPX. Supplier shall not possess or assert encumbrances or other rights in or to the Personal Information. Supplier hereby assigns to UOPX without further consideration all of its right, title and interest in and to the Personal Information.
 - 4.5. In the event that UOPX requires Supplier to comply with the requirements of a UOPX Legal Hold to preserve relevant Personal Information in Supplier’s possession or control for the purposes of anticipated litigation, whether through access or preservation of Personal Information, UOPX shall provide Supplier with notice of (a) the UOPX Legal Hold, (b) the specific Personal Information to which the UOPX Legal Hold applies and (c) the time for the UOPX Legal Hold to be complied with by Supplier. Supplier shall comply with the requirements of such notice upon receipt.
 - 4.6. Upon request by UOPX at any time, including expiration or termination of the Agreement, Supplier shall at no charge to UOPX and in each case to the extent so requested by UOPX (a) promptly return to UOPX in a secure portable digital format all or any part of the Personal Information and (b) securely erase or destroy all or any part of the Personal Information in Supplier’s possession. Supplier shall provide UOPX a certificate attesting to its compliance with this Section (i) no later than 30 calendar days after UOPX’s request.
 - 4.7. Supplier shall correct, at UOPX’s request and at no charge to UOPX, any destruction, loss or alteration of any Personal Information caused by Supplier.
 - 4.8. All Personal Information that Supplier Processes pursuant to the Agreement will reside on servers located within the United States, and Supplier will not Process nor cause or permit to be Processed any Personal Information outside of the United States without express written consent.
 - 4.9. CCPA Compliance.

4.9.1 Definitions. The terms “Business,” “Business Purpose,” “Personal Information,” “Consumer,” “Sell” (and its derivatives) and “Service Provider,” shall have the meanings ascribed to them in the California Consumer Privacy Act of 2018 (“CCPA”).

4.9.2 Restrictions on Processing Personal Information. Supplier acknowledges and agrees that UOPX is a “Business” and Supplier is a “Service Provider” under the CCPA, and the collection and use of any Personal Information from California Consumers shall be governed by this Act. UOPX may provide Personal Information to Supplier for the necessary Business Purpose of providing the Services specified in this Agreement in Supplier’s capacity as a Service Provider. Supplier shall use the Personal Information only as reasonably necessary and proportionate to achieve the Business Purpose for which the Personal Information is provided. Supplier shall not Sell any Personal Information. Supplier is also prohibited from: (a) from retaining, using, or disclosing Personal Information for any purpose other than for the specific purpose of performing the Services specified in this Agreement, including any use for a commercial purpose other than performing the Services specified in this Agreement; (b) further collecting, selling, or using Personal Information except as necessary to perform such Services; and (c) from retaining, using or disclosing any Personal Information outside of the direct business relationship between UOPX and Supplier.

4.9.3 Restrictions on Disclosing Personal Information. Supplier shall not disclose Personal Information to any third parties without UOPX’s prior written consent. In the event that such consent is provided, Supplier and UOPX shall work together to ensure that such disclosure complies with all privacy laws and Supplier shall enter into a written agreement with such third party, which contains obligations that are equivalent to the terms in this Section 4.9.3.

4.9.4 Certification. Supplier certifies that it understands and will comply with the requirements set forth in Section 4.9.2 and 4.9.3 above.

- 5. Subcontractors.** Supplier will not subcontract any of its obligations under the Agreement to any affiliate, third party or Supplier (each a “**Subcontractor**”) or engage or permit any Subcontractor to Process Personal Information or otherwise transfer, disclose or provide access to the Personal Information to a third party, except where the following conditions are satisfied prior to the Processing of any Personal Information by any Subcontractor: (i) Supplier shall notify UOPX in writing unless prohibited by applicable law from doing so; (ii) Supplier shall obtain the prior written consent of UOPX; (iii) Supplier shall conclude a written agreement with the Subcontractor that imposes the same obligations and restrictions on the Subcontractor as apply to Supplier under the Agreement including this Schedule; (iv) UOPX shall be entitled to obtain a copy of any agreement with a Subcontractor (which copy Supplier may redact to remove confidential commercial information); and (v) Supplier shall remain fully liable for the actions or omissions of any Subcontractors. UOPX expressly consents to the Subcontractors listed in **Appendix 1** hereto. Supplier must inform UOPX in writing of any intended changes to said Subcontractors and UOPX shall have a period of 30 (thirty) days from the date of the notice to inform Supplier in writing of any reasonable objection to the use of that Subcontractor. The Parties will then, for a period of no more than 30 (thirty) days from the date of UOPX’s objection, work together in good faith to attempt to find a commercially reasonable solution for the Supplier which avoids the use of the objected-to Subcontractor. Where no such solution can be found, UOPX may (notwithstanding anything to the contrary in the Terms) terminate the relevant Services immediately on written notice to Supplier, without penalty or indemnification.
- 6. Security/Adequate Safeguards.** Supplier agrees that Personal Information will be secured from unauthorized access, use, disclosure, loss, and theft and Processed using Industry Standards [AS APPLICABLE: as set forth in Supplier’s security document available here [insert] [attached as Appendix X]. Supplier shall not materially modify the security document without informing UOPX at least 30 (thirty) days in advance, and in no case shall any modification result in a lower level of security for Personal Information]. Without limiting the foregoing, Supplier represents and warrants the following:
- 6.1. Security Program.** Supplier has in place a comprehensive, written information security program designed to protect the information under its custody, management or control, including all Confidential and Personal Information. Supplier’s information security program complies with applicable law and includes the following safeguards: (a) secure business facilities, data centers, paper files, servers, back-up systems and computing equipment including, but not limited to, all mobile devices and other equipment with information storage capability; (b) network, device application, database and platform security; (c) secure transmission, storage and disposal; (d) authentication and access controls within media, applications, operating systems and equipment; (e) encryption of Personal Information placed [on any electronic notebook, portable hard drive or removable electronic media with information storage

capability, such as compact discs, USB drives, flash drives, tapes]; (f) encryption of Personal Information in transit and at rest; (g) Personal Information must not be Processed in test, development or non-production environments; (h) segregating UOPX Data from information of other clients of Supplier so that such information is not commingled; and (j) Personnel security and integrity including, but not limited to, background checks consistent with applicable law and the requirements of this Agreement.

- 6.2. Testing.** Supplier shall regularly, but in no event less than annually, evaluate, test and monitor the effectiveness of its information security program and shall promptly adjust and/or update such programs as reasonably warranted by the results of such evaluation, testing, and monitoring.
- 6.3. Training.** All Supplier Personnel with access to Personal Information are provided appropriate information security and privacy training to ensure their compliance with Supplier's obligations and restrictions under the Agreement and this Schedule as well as with Applicable Privacy Laws and with Supplier's information security program.
- 6.4. Audit and Contingency.** Supplier shall maintain an audit trail of all access to, and use of, UOPX Data. Supplier also shall implement and maintain appropriate business continuity, contingency and disaster recovery plans in order to maintain the availability, security and confidentiality of UOPX Data and restore normal operating procedures as promptly as possible in the event of a major disruption, business interruption or failure.
- 6.5. Standards.** Supplier's information security program materially complies with Industry Standards as modified from time to time. If Supplier conducts a security audit, such as an SSAE 18 audit, then Supplier will, at UOPX's request, provide a complete copy of the results of such audits at no additional cost.
- 6.6.** If Supplier is connecting to UOPX's network or systems, all Supplier connectivity to UOPX computing systems and all attempts at the same shall only be through UOPX's security gateways/firewalls and only through UOPX-approved security procedures. Supplier shall not access and shall not permit unauthorized persons or entities to access, UOPX computing systems and/or networks that contain UOPX Data without UOPX's express written authorization, and any such actual or attempted access shall be consistent with any such authorization. Supplier shall take appropriate measures to ensure that Supplier's systems connecting to UOPX's systems and anything provided to UOPX through such systems do not contain any Disabling Device. For purposes of this Agreement, "Disabling Device" means any programs, mechanisms, programming devices, malware or other computer code (i) designed to disrupt, disable, harm, or otherwise impede in any manner the operation of any software program or code, or any computer system or network (commonly referred to as "malware", "spyware", "viruses" or "worms"); (ii) that would disable or impair the operation thereof or of any software, computer system or network in any way based on the elapsing of a period of time or the advancement to a particular date or other numeral (referred to as "time bombs", "time locks", or "drop dead" devices); (iii) is designed to or could reasonably be used to permit a party or any third party to access any computer system or network (referred to as "trojans", "traps", "access codes" or "trap door" devices); or (iv) is designed to or could reasonably be used to permit a party or any third party to track, monitor or otherwise report the operation and use of any software program or any computer system or network by the other party or any of its Affiliates.
- 7. Amendments.** Supplier acknowledges that Applicable Privacy Laws are subject to change. Supplier shall reasonably cooperate with UOPX to amend the terms of the Agreement to the extent necessary for UOPX's or its affiliates' compliance with all amended and additional Applicable Privacy Laws.
- 8. Personal Information Requests.** Unless otherwise prohibited to do so, Supplier will promptly notify UOPX about any request from a regulator, governmental entity or other third party relating to the Services or the Agreement, any legally binding request for disclosure of Personal Information. To the extent applicable, for any request received directly from an individual relating to his or her Personal Information Supplier will notify UOPX and assist to the extent necessary to permit UOPX to respond to or seek to limit any such request for Personal Information.
- 9. Security Testing and Audits.** Upon notice to Supplier, UOPX may carry out or have carried out a security audit of the services. Such UOPX audits shall occur no more than annually (except in the event of a Data Security Incident, in which case UOPX may perform an additional audit or follow up audit). Supplier shall make its representatives available to the extent reasonably necessary to answer questions or otherwise assist UOPX in performing such audits.

- 10. Security Breaches.** Supplier agrees to notify UOPX immediately (which in no event shall be longer than twenty-four (24) hours) upon discovery of an actual or suspected Data Security Incident,. Such notice shall include all information reasonably required by UOPX to comply with its obligations under Applicable Privacy Laws, breach notification laws, or other applicable law. Supplier hereby agrees to cooperate fully and promptly in UOPX's handling of the Data Security Incident or suspected Data Security Incident including, but not limited to: (i) assisting with any investigation; (ii) providing UOPX with physical access to the facilities and operations affected, as reasonably required by UOPX; (iii) facilitating interviews with Supplier's employees and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards or as otherwise requested by UOPX. Supplier shall cooperate with UOPX and use its best efforts to immediately remedy any known Data Security Incident and prevent any further Data Security Incident, in accordance with applicable privacy rights, laws, regulations and standards. In the event of any Data Security Incident and notwithstanding any provision in the Agreement to the contrary, Supplier shall in all cases bear, be responsible for and pay: (a) the losses incurred by UOPX and Supplier in complying with their respective legal obligations relating to the Data Security Incident, including, without limitation, with regard to any third party claims and first party costs and expenses; and (b) in addition to any other losses for which Supplier may be liable for under the Agreement, the following costs and expenses incurred by UOPX in responding to such breach, to the extent applicable: (i) the costs and expenses of providing notice to affected individuals, (ii) the costs and expenses of providing notice to governmental authorities, credit bureaus, and other required entities, (iii) costs and expenses related to the reasonably anticipated and commercially recognized consumer data breach mitigation efforts including, but not limited to, providing affected individuals with credit monitoring services for a specific period of at least twelve (12) months, (iv) call center support for such affected individuals for a specific period not to exceed twelve (12) months or such longer time as is required by law or recommended by one or more regulators (v) costs and expenses incurred to engage independent third-party forensic investigator, legal counsel, and/or any other third party, to investigate assess or remediate the Data Security Incident and to comply with all laws and/or relevant industry standards, (vi) costs and expenses incurred for the retention of a public relations or crisis management firm in order to manage communications on behalf of UOPX related to any Data Security Incident, and (vii) the costs and expenses of any other measures required under Applicable Privacy Laws or other applicable laws or regulations; and (c) any other costs and losses for which Supplier would be liable under the Agreement.
- 11. Security Warranty.** Supplier warrants and represents that (i) it has not been the subject of or the direct or indirect cause of any prior Data Security Incident; (ii) there are no claims threatened or pending, or events or circumstances known to Supplier likely to give rise to claims as a result of any Data Security Incident or failure to implement and maintain industry standard information security measures; and (iii) there are no regulatory actions threatened or pending, or events or circumstances known to Supplier likely to give rise to a regulatory action as a result of any Data Security Incident or failure to implement and maintain industry standard information security measures.
- 12. Indemnification.** In addition to and separate from its other indemnification obligations set forth in the Agreement, and notwithstanding any provision in the Agreement to the contrary, Supplier will indemnify, defend and hold harmless UOPX, UOPX's Affiliates and their respective employees, directors, officers, contractors, successors and assigns from and against any and all (i) liabilities, settlements, awards, penalties, sanctions, interest, costs, damages, fines, judgments, expenses and losses of any kind (including reasonable attorney fees, disbursements, court costs, and expenses and any costs to be incurred in complying with any legal obligations) relating to or arising out of (a) any unauthorized access to or disclosure or use of Personal Information attributable to, related to or resulting from a failure by Supplier or Supplier's employees or agents to comply with any of the obligations with respect to Personal Information under the Agreement or this Schedule, and (b) a Data Security Incident.
- 13. General Terms.**
- 13.1. Conflicts.** In the event Supplier believes that it cannot satisfy its other obligations under the Agreement while complying fully with this Privacy and Security Schedule, Supplier will notify UOPX as soon as practicable and will work with UOPX to resolve the issue to UOPX's reasonable satisfaction.
- 13.2. Survival.** Notwithstanding anything to the contrary in the Agreement including, the obligations pursuant to this Exhibit B shall survive termination of the Agreement and shall continue with full force and effect unless and until Supplier ceases to Process the Personal Information and returns or destroys all Personal Information in accordance with the terms of this Schedule.

- 13.3. Precedence.** This Privacy and Security Schedule is made part of but does not supersede the Agreement, except with respect to the subject matter of this Privacy and Security Schedule. In the event any provision of the Agreement conflicts with the terms of this Privacy and Security Schedule, the terms of this Privacy and Security Schedule shall take precedence where its terms provide greater protection for Personal Data.
- 13.4. Severability.** If any provision of this Privacy and Data Security Schedule shall be unlawful, void, or for any reason unenforceable under an applicable law, then that provision shall be deemed severable only to the extent necessary, and shall not affect the validity and enforceability (i) of the provision under another applicable law, nor (ii) of any remaining provisions of this Privacy and Data Security Schedule or the Agreement.
- 13.5. Headings.** The headings and titles in this Privacy and Data Security Schedule are for convenience only and shall not affect the interpretation of the terms hereof.
- 13.6. Amendment.** This Privacy and Data Security Schedule cannot be modified, amended, or changed except in writing and signed by the parties.
- 13.7. Material Breach.** Any breach of this Privacy and Data Security Schedule shall constitute a material breach of the Agreement and UOPX may immediately terminate the Agreement and pursue all remedies available to it.
- 13.8. Injunctive Relief.** Supplier acknowledges that any breach of its covenants or obligations set forth in this Schedule shall cause UOPX irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach, UOPX is entitled to seek equitable relief without the necessity of a bond or security, or without proving actual damages, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which UOPX may be entitled at law or in equity.