**COLLEGE BOARD ENROLLMENT AGREEMENT**

This Enrollment Agreement (“Agreement”) is made and entered into by and between the College Board, a non-stock, not-for-profit education corporation organized under the laws of the State of New York (“College Board”) and Arizona State University (“Client”), organized under the laws of the State of Arizona.

Whereas, Client agrees to obtain from the College Board, and the College Board agrees to provide to Client, a service, and/or license for certain software products and/or data, as indicated in this Agreement, pursuant to the terms and subject to the conditions contained herein.

Now, therefore, in consideration of the payments agreed to be made and the covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

**1.** The software, data and/or service described in the attached schedule(s) (“Schedules”) will be provided under this Agreement, as of the Effective Date (as defined in section 7(a) of this Agreement).

If Client licenses any additional software and/or data and/or adds service from the College Board after the Effective Date of this Agreement, the parties shall enter into a written addendum to this Agreement.

All software and/or data licensed and/or services provided covered under this Agreement shall be referred to as the “Deliverable” or collectively referred to as “Deliverables.”

This Agreement consists of the terms set forth below and one or more Schedules, Attachment 1, entitled “Client Contact Information”, and Attachment 2, entitled “Fees Schedule” (attached only if applicable). The Schedules and Attachments are considered integral parts of this Agreement. In the event of a discrepancy or conflict between the provisions set forth below and the provisions set forth in a Schedule or Attachment, the provisions of the Schedule or Attachment, as applicable, shall govern. Any terms and conditions included on a purchase order submitted by Client shall not have any force or effect unless such document is properly incorporated into this Agreement.

**2. AUTHORIZED USERS.** “Authorized Users” shall be defined in the applicable Schedule, and if not defined therein, shall be limited to Client’s employees, agents, contractors and consultants, including branch campuses or members of Client’s college or university system, who have been designated by Client as authorized users of the Deliverables and for whom Client has paid all applicable fees for use of the Deliverables. Client shall obtain the College Board’s written consent for staff other than Client’s employees, including agents, contractors, consultants or third party vendors, who shall have first executed a nondisclosure agreement reasonably satisfactory to the College Board governing the treatment of such information. Such consent shall not be unreasonably withheld, and shall be immediately revoked if such user is no longer performing a function which permits or requires access to the Deliverables. Upon College Board’s approval, such agents, contractors, consultants or third party vendors shall be considered “Authorized Users” for purposes of this Agreement.

**3. FEES AND PAYMENT.** Client shall pay those fees set forth in each Schedule for the Deliverables. Unless otherwise indicated in a Schedule, payment terms are Net 30**.**

**4. REPRESENTATIONS AND WARRANTIES.**

**a. Authority.** Each party hereby represents and warrants to the other that it has the requisite authority to enter into and be bound by this Agreement, that entry into this Agreement has been duly authorized and executed by all necessary action, and that entry into this Agreement does not violate any laws, rules or regulations which govern it or any agreements by which it is bound.

**b. College Board Warranty**. The College Board warrants to Client that the Deliverables shall be performed in a good and workmanlike manner consistent with industry standards.

**c. College Board Disclaimer of Warranties**. EXCEPT AS PROVIDED ABOVE, THE COLLEGE BOARD MAKES NO WARRANTIES WHATSOEVER AND PROVIDES THE DELIVERABLES, AS APPLICABLE, ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE COLLEGE BOARD AND ITS AFFILIATES AND SUPPLIERS HEREBY DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. THE COLLEGE BOARD DOES NOT WARRANT THE OPERATION OF THE DELIVERABLES TO BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED. FURTHERMORE, THE COLLEGE BOARD DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF THE DELIVERABLES OR THE RESULTS OBTAINED THEREFROM OR THAT THE DELIVERABLES WILL SATISFY CLIENT’S REQUIREMENTS.

**5. LIMITATION OF LIABILITY AND INDEMNIFICATION.**

**a.** To the extent permitted by law, in no event shall either party, its affiliates or its subcontractors, be liable for any special, incidental, indirect, consequential, exemplary or punitive damages (including any damages for loss of data, goodwill, business, profits or interruption in use or availability of the products or the like), even if such party has been advised of the possibility of such damages. The College Board shall not be liable for any expenses or damages arising out of any erasure, damage or destruction of files, data or software. CLIENT shall be responsible for making backup copies of such materials.

**b.** In no event shall College Board's, its affiliates’ or its subcontractors’, aggregate liability for any cause of action arising out of or relating to this agreement exceed the Fees actually paid by CLIENT under this agreement for the specific DELIVERABLE subject to the damageS claim. The foregoing limitations shall apply regardless of the cause or the form of action (whether based in contract, tort, negligence, strict liability, warranty or otherwise) and notwithstanding any failure of essential purpose of any limited remedy.

**c. Indemnification.** To the extent permitted by law and notwithstanding any other provision of this Agreement, Client agrees to indemnify, hold harmless and defend the College Board from and against any and all liabilities, demands, claims, fines, penalties damages, forfeitures and suits, together with reasonable attorneys' and witnesses' fees and other costs and expenses of defense and settlement, which the College Board may incur, become responsible for or pay out as a result of death or bodily injury or threat thereof to any person, destruction of or damage to any property, any violation of local state or federal laws, regulations or orders, or any other damages claimed by third parties (collectively, "Damages") provided, however, that Client shall not be obligated to indemnify the College Board to the extent such Damages are caused directly by the negligence or willful misconduct of the College Board.

**d. Infringement Claims.** Subject to this Section 5, the College Board, at its own expense, shall defend or settle, at College Board's option, any third party claim, suit or proceeding (“Third Party Claim”) brought against Client claiming that the Deliverables infringe upon such third party's valid United States patent or copyright, and College Board shall pay any final judgment entered against Client by a court of competent jurisdiction or settlement agreed to by College Board with respect to any such Third Party Claim, but only if: (i) Client notifies College Board in writing within ten (10) days after first becoming aware of such Third Party Claim; (ii) College Board has sole control over the defense and settlement of such Third Party Claim; (iii) at College Board's request and expense, Client reasonably cooperates with College Board in defending such Third Party Claim; and (iv) Client takes no action that is contrary to College Board's interests with respect to such Third Party Claim.

**i. Remedy**. Upon assertion of any such Third Party Claim, College Board shall have the right, at its sole option and expense, to: (a) obtain the right to continue using the Deliverables; (b) replace or modify the affected portions of the Deliverables so that they are no longer infringing; or, if neither of the foregoing options is reasonably available to College Board, then (c) accept return of the affected Deliverables and refund to Client the prorated portion of the fees actually paid by Client under the applicable Schedule during the then-current annual term.

**ii. Limitations**. This Section 5d states College Board's entire liability and Client's exclusive remedies for infringement. College Board shall have no liability or obligation to Client under this Section 5d if the Third Party Claim results from: (a) modifications or alterations to the Deliverables made by Client or a party other than College Board or its authorized agents, or made by College Board pursuant to specific design instructions furnished by Client; (b) Client's failure to promptly install an Update, if applicable and if installation of such Update would have avoided the infringement; or (c) Client's use of the Deliverables in combination with any products, services or materials not provided by College Board or use other than in accordance with the applicable Schedule.

**6. CONFIDENTIAL AND PROPRIETARY INFORMATION.**

**a.** As part of providing the Deliverables, the College Board may from time-to-time provide Client with information or materials considered by the College Board to be confidential and proprietary. Client will not, to the extent allowed by law, during the term of the Agreement or thereafter, without prior approval, disclose or make known to anyone not an Authorized User, any of the College Board’s confidential or proprietary information or materials.

**b.** The College Board will not, during the term of the Agreement or thereafter, without prior approval, disclose or make known to anyone not an employee agent, subcontractor or consultant of College Board or designated by Client to receive such information, any of Client’s confidential or proprietary information or materials which are designated as such to the College Board in writing, or any part thereof, which the College Board may learn or be exposed to during the terms of this Agreement.

**c.** The obligations of the receiving party under this Agreement with respect to the protection of confidential information shall not extend to any information which: (i) is already known to the receiving party or independently developed by it; (ii) is publicly available or becomes publicly available through no fault of the receiving party; (iii) is received by the receiving party without restriction from a third party not under an obligation of confidentiality to the disclosing party; (iv) is furnished by the disclosing party to a third party without a similar restriction of the third party’s rights; (v) is not designated as being confidential or proprietary by the disclosing party in accordance with this section; or (vi) is disclosed by the receiving party pursuant to any judicial or governmental requirement or order, provided that the receiving party takes reasonable steps to give the disclosing party sufficient prior notice in order for the disclosing party to contest such requirement or order.

**d.** Notwithstanding the foregoing, the College Board and Client agree that student and prospective student data are confidential, regardless of whether it is designated as confidential, and further, Section 6c(i) through (v) shall not apply to such data.

**7. TERM AND TERMINATION.**

**a. Term.** The term of this Agreement shall begin as of the earliest start date set forth in a Schedule (“Effective Date”) and, unless sooner terminated as provided in this Agreement, will expire on the date that the final Schedule expires (“Term”). During any renewal term, Deliverables will be subject to the College Board’s then-current fees and policies at the time of renewal for such Deliverables.

**b. Termination**. If a party commits a breach of any of the material provisions of this Agreement (including Client’s failure to make payments when due), the other party may give that party written notice to cure such breach within thirty (30) days and, if such breach is not cured within the thirty (30) day period, the non-breaching party shall have the right to terminate this Agreement, without waiver of any other remedy, whether legal or equitable: **provided, however,** that if Client should breach the Section entitled Representations and Warranties and/or Confidential and Proprietary Information, then the College Board shall have the right to terminate this Agreement immediately.

**c. Rights after Termination.** Upon termination or expiration of aSchedule, all rights granted to Client hereunder with respect to the Deliverables under that Schedule shall cease, and Client, except as expressly permitted under such Schedule, shall; (i) immediately cease all use of the applicable Deliverables and purge any and all software, content and materials from Client’s computer systems, storage media and files and all copies thereof, and (ii) promptly return or destroy, at College Board's direction, content and materials, and all copies thereof, and all other confidential information of College Board then in Client's possession or under Client’s control.

**d. Partial Payment upon Termination**. Client will compensate the College Board for all Deliverables received, prior to the effective date of any termination under the Agreement.

**e. Availability of Deliverables.** In addition to its other rights hereunder and notwithstanding the terms of any Schedule, the College Board may cease making certain Deliverables commercially available at any time by providing Client sixty (60) days written notice. In such event, the College Board will cease furnishing such Deliverables under this Agreement and the Agreement shall continue in full force and effect, except for provisions specifically affecting such Deliverables. The College Board will refund Client any fees, including unused maintenance for Software products, paid for the unused portion of such Deliverables.

**8. MISCELLANEOUS.**

**a. Cooperation**. Client shall cooperate fully with College Board, its agents, consultants and subcontractors and provide all assistance as reasonably necessary for the College Board to furnish the Deliverables and fulfill its obligations hereunder, including: (i) as applicable, providing prompt access to Client’s personnel, equipment, software, systems, documentation; (ii) fulfilling its obligations under a Schedule; and (iii) furnishing College Board with Client contact information.

**b. Force Majeure**. No party will be liable to the other, and such shall not be grounds to terminate this Agreement, for disruptions in usage of the Deliverables caused by acts of God, acts of terrorism, governmental authority, or all other events beyond the reasonable control of the party claiming rights under this Section (a “Force Majeure Event”). The College Board’s obligation to furnish the Deliverables shall be suspended (or reduced, as applicable) during the period and to the extent that provision of the Deliverables is disrupted by the Force Majeure Event, without such suspension or disruption constituting a material breach of its obligations under this Agreement.

**c. Governing Law/Jurisdiction**. This Agreement is governed by the substantive laws of the State of New York without giving effect to the principles of laws of conflicts thereof. The parties hereto irrevocable submit to the jurisdiction of any New York State or United States Federal court sitting in New York, New York, with respect to any suit, action or proceeding arising out of or relating to this Agreement; provided, however, that prior to the instigation of any such action (other than an action for equitable relief), individuals from each party with decision-making authority shall meet at a mutually agreeable time and place, including by telephone or video conference, regarding the issue to attempt in good faith to negotiate a resolution of the dispute. If within forty-five (45) days after such meeting the parties have not succeeded in resolving the dispute, either party may proceed at law, or in equity, in a court of competent jurisdiction.

**d. Taxes.** Client agrees to pay any sales, use, value added or other taxes or import duties (other than the College Board’s corporate income taxes) based on, or due as a result of, any Fees paid to the College Board under this Agreement, unless Client is exempt from such taxes as the result of Client’s corporate or government status and Client has furnished College Board with a valid tax exemption certificate. Client agrees to receive any software licensed hereunder solely by electronic delivery and that such software license does not include the delivery of any tangible personal property.

**e. Notices**. All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended on the day so delivered, if delivered by registered or certified mail, return receipt requested, or by courier service on the date of its receipt by the intended party (as indicated by the records of such of the U.S. Postal Service or the courier service), or if sent by e-mail, or if not a business day, the next succeeding business day, provided that the email sender retains confirmation of a “read-receipt” which acknowledges recipient’s opening of such email, or if not available, promptly confirms by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| To College Board: |  | With a copy to: |  | To Client: |
| HED Contract Management |  | Legal Department |  | Brad Baertsch |
| The College Board |  | The College Board |  | Arizona State University |
| 250 Vesey Street |  | 250 Vesey Street |  | PO Box 870112 |
| New York, NY 10281 |  | New York, NY 10281 |  | Tempe, Arizona 85287 |
| Tel: (212) 373-8706 |  | Tel: (212) 713-8323 |  | Tel: (480) 727-3844 |
|  |  |  |  |  |
| Email: ContractsManagement@collegeboard.org |  | Email:  Legalnotice@collegeboard.org |  | Email:  brad.baertsch@asu.edu |

**f. Publicity**. The College Board may use “Client Marks” in connection with publicized client lists, advertising and other promotional and marketing materials, including placing references to Client on College Board's website, provided that College Board complies with any reasonable written trademark usage guidelines furnished by Client. For purposes of this Agreement, “Client Marks” shall mean all trademarks, trade names, service marks, and logos of Client. The parties may issue a mutually agreed upon joint press release on or after the Effective Date announcing their relationship. The College Board may use Client as a reference in connection with proposals and other communications with prospective clients.

**g. Assignment.** Client shall not subcontract assign or transfer this Agreement or otherwise dispose of its right, title, or interest therein or any part thereof to any person, without obtaining the prior written consent of the College Board which the College Board may grant or deny in its sole discretion. For purposes of this provision, a sale or transfer of the stock or all, or substantially all, of the assets of Client, a merger (by operation of law or otherwise), consolidation, exchange, a change of control or other business combination involving Client or Client’s parent company shall be deemed an assignment, regardless of whether such transaction results in Client (or its parent, as applicable) being the surviving or disappearing corporation. A change of control shall mean if any other person or entity acquires, at a minimum, a fifty percent (50%) direct or indirect ownership interest in, or control over, Client and/or Client’s parent company. Any attempted assignment without such prior written consent shall be void and of no force and effect.

**h. Survival.** The provisions within this Agreement, including its Schedules, pertaining to fees, payment schedule, ownership of software and data, license of software and data, intellectual property, representations and warranties, limitation of liability, confidential and proprietary information, indemnification, term and termination, and Section 8 herein, entitled Miscellaneous, shall survive the termination or expiration of this Agreement.

**i. Severability.** The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any person or entity or any circumstance, is invalid or unenforceable, (i) a suitable and equitable provision shall be substituted therefor in order to carry out so far as may be valid and enforceable provision and (ii) the remainder of this Agreement and the application of such provision to other persons, entities, or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

**j. Third Party Rights.** Nothing contained in this Agreement, express or implied, establishes or creates, or is intended or will be construed to establish or create, any right in or remedy of, or any duty or obligation to, any third party.

**k. Headings/Interpretation.** Headings contained in this Agreement are for reference purposes only, and shall not affect or modify in any way the meaning or interpretation of any provision of this Agreement. The words “hereof”, “herein”, and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All references to sections or schedules shall be deemed to refer to Sections and Schedules of this Agreement unless specified to the contrary. The words “include”, “includes” and “including” shall be deemed in each case to be followed by the words “without limitation.”

**l. Amendment; Waiver.** Any provision of this Agreement may be amended, modified or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the parties, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof or the exercise of any other right, power or privilege. Except as otherwise provided herein, the rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

**m. Relationship of the Parties.** The relationship of Client and the College Board is that of independent contractors. Neither party nor their employees are partners, agents, employees or joint ventures of the other party. Neither party shall have any authority to bind the other party to any obligation by contract or otherwise. The College Board’s employees shall not be considered employees of Client while performing these services and will not be entitled to fringe benefits normally accruing to employees of Client. Client and the College Board recognize and agree that the College Board is an independent contractor, and that neither the College Board nor any of the College Board's employees or agents is an employee of Client.

**n. Integration, Execution and Delivery.** The Agreement includes the Schedules and attachments attached hereto and constitutes the entire agreement between the College Board and Client, and supersedes all prior written or oral understandings, bids, offers, negotiations, or communications of every kind concerning the subject matter of this Agreement, including any Client purchase order. No course of dealing between parties and no usage of trade shall be relevant to supplement any term used in the Agreement. Acceptance or acquiescence in a course of performance rendered under the Agreement shall not be relevant to determine the meaning of the Agreement and no waiver by a party of any right under the Agreement shall prejudice that party's exercise of that right in the future. This Agreement may be executed through signatures, including DocuSign eSignatures, to any number of counterparts, each of which shall be deemed an original, which together will constitute one Agreement. Delivery of an executed counterpart of this Agreement by electronic transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by electronic transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing execution and delivery shall apply to this Agreement.

By signing below, the parties have so indicated their agreement with the terms and conditions stated herein.

AGREED AND ACCEPTED:

|  |  |  |
| --- | --- | --- |
| **Arizona State University** |  | **THE COLLEGE BOARD** |
| \s1\ |  | \s2\ |
| Signature |  | Signature |
| Brad Baertsch |  | Jeremy Singer |
| Name |  | Name |
| Director, Freshman Recruitment |  | Chief Operating Officer |
| Title |  | Title |
| \d1\ |  | \d2\ |
| Date |  | Date |

**ATTACHMENT 1 TO COLLEGE BOARD ENROLLMENT AGREEMENT**

**CLIENT CONTACT INFORMATION**

|  |  |  |
| --- | --- | --- |
| **Invoice and Billing**  *Please note the name and contact information of the primary person to whom the College Board should direct invoices and BILLING RELATED communications for this Agreement.*  **Name:** | **Technical Support**  *Please note the name and contact information of the primary person to whom the College Board should direct TECHNICAL communications.*  **Name:** | **Contracts**  *Please note the name and contact information of the primary person to whom the College Board should direct CONTRACT communications.*  **Name:** Brad Baertsch |
| **Title:** | **Title:** | **Title:**  Director, Freshman Recruitment |
| **Street Address:** | **Street Address:** | **Street Address:**  PO Box 870112  Tempe, Arizona 85287 |
| **Phone Number:** | **Phone Number:** | **Phone Number:**  (480) 727-3844 |
| **Fax Number (if applicable):** | **Fax Number (if applicable):** | **Fax Number (if applicable):** |
| **E-mail:** | **E-mail:** | **E-mail:**  brad.baertsch@asu.edu |

**Schedule to College Board Enrollment Agreement**

**Enrollment Planning Service**™ **Unlimited**

Enrollment Planning Service™ provides web-based geodemographic analysis and data reporting from multiple College Board data sources, as well as Client-specific reports on student markets, Client’s position in those markets, and Client's competition. Enrollment Planning Service Unlimited includes: market-specific information about Client SAT score senders; projections of high school graduates by state and geomarket; the ability to query on and display information on current class year plus past graduating classes (collectively, ‘College Board Data’).

Training and Support. A user guide and an online tutorial for all functionality relevant to Enrollment Planning Service Unlimited is available on the College Board Search web site 24/7, currently located at https://collegeboardsearch.collegeboard.org/pastudentsrch/support/training. Users must be logged in with an authorized account to access training resources. Hours of support are 9:00 am – 5:00 pm Eastern Time Monday through Friday, excluding College Board holidays and other times for system maintenance. In person and/or electronic opportunities for training will be announced and offered periodically throughout the year.

**Supplemental Terms and Conditions – Enrollment Planning Service™ Unlimited**

**1. OWNERSHIP AND LICENSE OF DATA.**

a. Pursuant to the terms and conditions contained in this Schedule, the College Board hereby grants to Clienta non-exclusive, limited, non-transferable (except as indicated otherwise in Section 3 of this Schedule), revocable, license to use the College Board Data (as such term is defined above) solely for the Permitted Use, as such term is defined in Section 4 of this Schedule.

b. College Board Data is, and at all times will remain, the sole property of the College Board. The College Board retains all right, title and interest in and to the College Board Data, and all copies thereof (including, without limitation, all copyrights, trade secrets, trademarks, patents and other similar proprietary rights therein).

**2. USER ELIGIBILITY.** Client represents and warrants that Client meets, and at all times during the term of this Schedule will meet, the eligibility criteria, which are currently located at https://collegeboardsearch.collegeboard.org/pastudentsrch/support/licensing/becoming-a-user/eligibility. The College Board may conduct a review of Client’s eligibility for Enrollment Planning Service at any time. Client agrees to reasonably cooperate with the College Board with regard to such review, including promptly providing to the College Board, upon its request, any related documentation. Notwithstanding the foregoing, Client shall immediately inform the College Board should Client undergo a change relating to the basis upon which Client was deemed eligible for Enrollment Planning Service, or if Client: (i) loses its accreditation; (ii) becomes the subject of a regulatory investigation; or (iii) transitions from not-for-profit to for-profit status.

**3. AUTHORIZED USERS** shall be defined as, and limited to: (i) employees of Client’s organization whom Client has authorized in writing to receive and use the College Board Data in accordance with this Schedule (‘Employee User’) and (ii) Third Parties for whom Client has consented in writing to access the College Board Data (‘Authorized Third Parties’, and with Employee User, collectively ‘Authorized Users’). Client must establish a separate Enrollment Planning Service user account for each Employee User in accordance with College Board procedures, and for authorized employees of those Authorized Third Parties requiring access to the Enrollment Planning Service interface. Client is responsible for ensuring that Authorized Users use the College Board Data in accordance with this Schedule, and Client will be liable to the College Board for any misuse of the College Board Data by an Authorized User. Client will control the access of Client’s Authorized Users to the Enrollment Planning Service and will immediately revoke such access if the user ceases to be employed by Client or is no longer appropriately authorized to access the Enrollment Planning Service.

**4. USE OF THE DATA**. Client (and Authorized Users) shall use the College Board Data solely for the purpose of analyzing the student marketplace and Client’s position within such marketplace (‘Permitted Use’). Client agrees not to copy, publish, release, use, lend, sell, rent or otherwise make available this information to any other institution, organization, or individual without the written consent of the College Board. It is understood that any inappropriate or secondary use of College Board Data is prohibited, and violations of this Schedule will lead to cancellation of future service and Client will be subject to legal action to the fullest extent of the law. This Schedule permits Client to use the College Board Data and reports provided, consistent with guidelines set forth in agreements between students, high schools, colleges and universities, and the College Board. Client shall adhere to generally accepted ethical standards for student recruitment.

Additionally, Client agrees that it will not use the College Board Data to: (i) make or influence individual admissions decisions, and (ii) discriminate against potential applicants on the basis of race, color, creed, national origin, age, sex, and socioeconomic background. Nothing in this Schedule, however, shall prevent Client from using data and reports provided by Enrollment Planning Service in connection with a valid affirmative action program that takes such characteristics into account in furtherance of the permissible goal of attaining a diverse student body.

Client shall ensure that each Authorized User reads and agrees to comply with the terms herein.

Client shall comply with College Board’s guidelines ‘On the Uses of College Board Test Scores & Related Data’ and ‘For the Release of Data’ currently found at http://research.collegeboard.org/data.

**5. HOSTING**. Client will access Enrollment Planning Service via College Board Search, a College Board-hosted website. Client understands and agrees that there is a risk of interruption to websites. Additionally, the website may be suspended from time to time for administrative purposes as necessary, including but not limited to, system maintenance. The College Board may change the technical functionality of the website at any time to the extent necessary to address technical and other business needs of the College Board.

**6. RESTRICTIONS ON USE.** Except as and only to the extent expressly permitted in this Schedule or by applicable law, Client shall not copy, decompile, reverse engineer, disassemble, attempt to derive the source code, data layouts, algorithms, formulae, decrypt, modify, or create derivative works of Enrollment Planning Service, system updates or any part thereof. Any attempt to do so is a violation of rights of the College Board. If Client breaches this restriction, Client may be subject to prosecution and damages.

**7. TERM.** This Schedule shall commence on the date this Agreement is fully executed, and will automatically renew on an annual basis as long as Client continues to pay College Board’s annual invoice. Client may elect to discontinue the Schedule upon receipt of annual invoice by providing written notice to the College Board. Each extension of Client subscription beyond the initial twelve-month (12) period(s) may contain modifications to the Terms and Conditions hereof as agreed upon by both parties.

**8. FOR RENEWING CLIENTS** – Client will have continued access to the Enrollment Planning Service™ for thirty (30) days after the end of each twelve (12) month term (‘Grace Period’). Following the Grace Period, if payment of annual invoice has not been received by the College Board, Client access to the Enrollment Planning Service™ will be suspended until the College Board receives payment in full.If Client fails to pay the invoiced amount after sixty (60) days from the end of any twelve (12) month term, this Schedule shall automatically be terminated. Client's access to the Enrollment Planning Service™ for all Authorized Users shall immediately cease.

**9. TERMINATION**: The College Board may terminate this Schedule upon written notice to Client in the event that: (i) Client breaches the terms of this Schedule, or (ii) the College Board determines, in its sole discretion, that Client is no longer eligible to use Enrollment Planning Service; or (iii) the College Board has a reasonable basis to question Client or an Authorized Third Party’s use of the College Board Data. If Client terminates this Schedule during the then-current twelve-month period, Client will not receive a refund of fees paid for that period. Client will reimburse the College Board for any multi-year discount that Client may have received for this Schedule. Additionally, if Client initiates or participates in any legal proceeding against the College Board, the College Board, in its sole discretion, may suspend or terminate all rights, including the right to use the College Board Data during the course of such legal proceedings.

**10. FEES.**

Client agrees to pay to the College Board the fees for the period(s) noted in the attached Fees Schedule. Fees are subject to change after the period(s) noted in the attached Fees Schedule.

**Schedule to College Board Enrollment Agreement**

**Segment Analysis Service™ Unlimited**

To assist Client with recruitment, admissions and retention, Segment Analysis Service™ matches student address and high school information to unique geodemographic neighborhood and high school clusters and descriptive indicators (also known as ‘Factor Scores’) based on information from College Board data and the U. S. Census.

**Client Data.** Client will provide to the College Board the street address, zip code and high school code of students in the appropriate format specified by the College Board.

**Historical Analysis.** Upon commencement of the service, the College Board will tag, analyze, and report on an historical electronic data file of student records provided by Client for up to three recent incoming classes (prospects through matriculants). Cluster codes (each two-character, numeric) representing educational neighborhoods and high school clusters will be appended by the College Board to student records that contain required data elements: a deliverable home address and a valid United States high school code. In addition, the College Board will provide supplementary file of records appended with descriptive indicators (‘Supplemental Factor Score File’). Client can utilize Educational Neighborhood and High School Cluster tags as criterion when purchasing names, and receive Educational Neighborhood and High School Cluster tags with the output on all domestic names purchased when clusters are used as criterion. Client may tag an unlimited number of files and will receive individual cluster factor scores with all output files. The College Board will provide Client with annual historical tagging in each subsequent year of this Agreement. The initial historical analysis and subsequent annual historical taggings will be made available to Client on the College Board Search website.

**Cluster Taggings.** Tagging (i.e. the appending of geodemographic cluster codes to student records in a data file that contains the required data elements and provision of Supplemental Factor Score File) of Client Data (as defined below) is done at Client’s discretion via the self-service tagging function in College Board Search and/or via electronic file transfers.

**Cluster Updates.** The College Board will provide Client with current profiles of each educational neighborhood and high school cluster throughout the Term of this schedule. Client acknowledges that cluster profiles will not necessarily change from year to year.

**Student Search Service® Geodemographic Selection Criteria and Data Output Taggings.** Client may include geodemographic clusters among Student Search Service selection criteria. Cluster codes (each two-character, numeric) representing educational neighborhoods and high school cluster will be appended by the College Board to student records that contain required data elements: a deliverable home address and a valid United States high school code. Client will receive taggings within data output files for each Student Search Service order placed.

**User Support.** Client may obtain user support for the Service by contacting the College Board’s user support staff by either calling the College Board’s toll-free telephone number or via electronic mail. Hours of support are 9:00 am – 5:00 pm Eastern Time Monday through Friday, excluding College Board holidays and other times for system maintenance.

**Supplemental Terms and Conditions – Segment Analysis Service Unlimited**

**1. DEFINITIONS.**

The following definitions shall apply to the Agreement.

**a. Client Data**. ‘Client Data’ means all student data furnished by Client to the College Board under this Schedule.

**b. College Board Data**. ‘College Board Data’ means the data furnished to by the College Board to Client as a part of the Services (as defined below), which include without limitation data taggings (cluster codes and Factor Scores) and cluster descriptions.

**c. Services**. ‘Services’ means, individually and collectively, the College Board’s Historical Analysis, Cluster Taggings, Cluster Updates and Student Search Service® Geodemographic Selection Criteria and Data Output Taggings, including reports and information provided by the College Board to Client.

**2. OWNERSHIP AND LICENSE OF DATA.**

**a.** Client Data shall remain the property of Client and shall be considered confidential or proprietary, as defined in the Agreement. Client hereby grants the College Board a non-exclusive, limited license to use Client Data and any information prepared or furnished by Client solely in connection with the College Board furnishing the Services.

**b.** College Board Data is, and at all times will remain, the sole property of the College Board. The College Board retains all right, title and interest in and to the College Board Data, and all copies thereof (including, without limitation, all copyrights, trade secrets, trademarks, patents and other similar proprietary rights therein). The College Board hereby grants to Client a non-exclusive, limited license to use the College Board Data solely in connection with recruitment, admissions and retention. The rights and College Board Data contained herein are non-transferable.

**c.** Client shall comply with the College Board’s guidelines currently published ‘On the Uses of the College Board Test Scores’ and ’For The Release of Data found at http://research.collegeboard.org/data.

**d. Client Warranty.** Client represents and warrants that it has the right to disclose Client Data and/or all information transmitted by Client to the College Board and, where third party information is being provided by Client to the College Board, it has obtained all licenses and approvals as may be required for the College Board to use such information for the Services in the manner and to the full extent contemplated under this Schedule.

**3. AUTHORIZED USERS** shall be defined as, and limited to: (i) employees of Client’s organization whom Client has authorized in writing to receive and use the College Board Data in accordance with this Schedule (‘Employee User’) and (ii) Third Parties for whom Client has consented in writing to access the College Board Data (‘Authorized Third Parties’). Client must establish a separate Segment Analysis Service user account for each Employee User in accordance with College Board procedures, and for authorized employees of those Authorized Third Parties requiring access to the Segment Analysis Service interface. Client is responsible for ensuring that Authorized Users use the College Board Data in accordance with this Schedule, and Client will be liable to the College Board for any misuse of the College Board Data by an Authorized User. Client will control the access of Client’s Authorized Users to Segment Analysis Service and will immediately revoke such access if the user ceases to be employed by Client or is no longer appropriately authorized to access Segment Analysis Service.

**4. RESTRICTIONS ON USE.** Except as and only to the extent expressly permitted in this Schedule or by applicable law, Client shall not copy, decompile, reverse engineer, disassemble, attempt to derive the source code, data layouts, algorithms, formula of, decrypt, modify, or create derivative works of Segment Analysis Service, system updates or any part thereof. Any attempt to do so is a violation of rights of the College Board. If Client breaches this restriction, Client may be subject to prosecution and damages.

**5. HOSTING**. Client will access Segment Analysis Service Unlimited via a College Board-hosted website. Client understands and agrees that there is a risk of interruption to websites. Additionally, the website may be suspended from time to time for administrative purposes as necessary, including but not limited to, system maintenance. The College Board may change the technical functionality of the website at any time to the extent necessary to address technical and other business needs of the College Board.

**6. TERM.** This Schedule shall commence on the date this Agreement is fully executed, and will automatically renew on an annual basis as long as Client continues to pay College Board’s annual invoice. Client may elect to discontinue the Schedule upon receipt of annual invoice by providing written notice to the College Board. Each extension of Client subscription beyond the initial twelve-month (12) period(s) may contain modifications to the Terms and Conditions hereof as agreed upon by both parties.

**7. FOR RENEWING CLIENTS**. Client will have continued access to the Segment Analysis Service™ for thirty (30) days after the end of each twelve (12) month term (‘Grace Period’). Following the Grace Period, if payment of Client’s annual invoice has not been received by the College Board, Client access to the Segment Analysis Service will be suspended until the College Board receives the payment. If Client fails to pay the invoiced amount after sixty (60) days from the end of any twelve (12) month term, this Schedule shall automatically be terminated, Client’s access to the Segment Analysis Service for all Authorized Users shall immediately cease.

**8. TERMINATION**. The College Board may terminate this Schedule upon written notice to Client in the event that: (i) Client breaches the terms of this Schedule, or (ii) the College Board determines, in its sole discretion, that Client is no longer eligible to use Segment Analysis Service; or (iii) the College Board has a reasonable basis to question Client or an Authorized Third Party’s use of the College Board Data. If Client terminates this Schedule during any (12) month period, Client will not receive a refund of fees paid for that period. Additionally, if Client initiates or participates in any legal proceeding against the College Board, the College Board, in its sole discretion, may suspend or terminate all rights, including the right to use the College Board Data during the course of such legal proceedings.

**9. FEES.**

Client agrees to pay to the College Board the fees for the period(s) set forth in the attached Fees Schedule. Fees are subject to change after the initial period(s) set forth in the attached Fees Schedule.

**ATTACHMENT 2 TO COLLEGE BOARD ENROLLMENT AGREEMENT**

**FEES SCHEDULE**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Product Name | | Quantity | | Total Cost |
| Segment Analysis Service™™ - Unlimited Subscription | | 1 | | $17,325.00 |
| Enrollment Planning Service™ - Unlimited Subscription | | 1 | | $7,376.00 |
| Segment Analysis Service™ - Unlimited Subscription | | 1 | | $17,325.00 |
| Enrollment Planning Service™ - Unlimited Subscription | | 1 | | $7,560.00 |
| Segment Analysis Service™ - Unlimited Subscription | | 1 | | $17,325.00 |
| Enrollment Planning Service™ - Unlimited Subscription | | 1 | | $7,560.00 |
|  |  | |  | |
|  | Total Price: | | $74,471.00 | |

**ATTACHMENT 2 TO COLLEGE BOARD ENROLLMENT AGREEMENT**

**FEES SCHEDULE**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Product Name | | Quantity | | Total Cost |
| Product. | | 0 | | 0 |
| Product. | | 0 | | 0 |
| Product. | | 0 | | 0 |
| Product. | | 0 | | 0 |
| Product. | | 0 | | 0 |
| Product. | | 0 | | 0 |
|  |  | |  | |
|  | Total Price: | | 0 | |