

SERVICES AGREEMENT

Dated February 14, 2018 (“**Effective Date**”)

PARTIES

- (1) **Trilogy Education Services, Inc.**, a Delaware corporation with an office at 31 E 32nd Street, #1202, New York, New York, 10016 (“**TES**”); and
- (2) **The University of Texas San Antonio**, a government agency and institution of higher education of the State of Texas, with an office at One UTSA Circle San Antonio, TX 78249 (“**UTSA**”), on behalf of UTSA’s Extended Education Office (the “**Extended Ed Office**”). TES and UTSA are collectively referred to as the “**Parties**” and each, individually, a “**Party**”.

RECITALS

- (A) The Extended Ed Office operates an adult extended education program that provides to customers of the Extended Ed Office certain continuing professional education opportunities through non-credit classes.
- (B) TES’ provides certain non-credit, part-time training classes (“**Class(es)**”) designed to teach class attendees intensive Coding (Web Development), Data Visualization & Analytics, and UX/UI Design programs.
- (C) The Extended Ed Office desires to offer the Classes as part of its services, and TES desires to provide the Classes.
- (D) This Services Agreement (“**Agreement**”) defines the terms of agreement pursuant to which the Parties shall offer the Classes. Each Party will dedicate the appropriate resources required to meet the deadlines and obligations defined in this Agreement.

1. **TRAINING PROGRAM OVERVIEW**

1.1 The Extended Ed Office will incorporate the Classes into its adult extended education programs, and TES will provide the Extended Ed Office a turnkey package of services for the Classes that includes:

- (i) marketing the Classes in collaboration with UTSA;
 - (ii) enrolling those individuals requesting and paying for attendance in the Classes;
 - (iii) securing individuals to teach the Classes ("**Instructors**")
 - (iv) ensuring Instructors appropriately teach the Classes to individuals attending the Classes ("**Participants**"); and
 - (v) providing student success and career services to Participants that is designed to result in Program success and job readiness,
- all in accordance with the terms and conditions of this Agreement.

The intensive Coding (Web Development) Curriculum, the Data Visualization & Analytics Curriculum, and the UX/UI Design Curriculum may each be referred to herein as a "**Program**" or collectively as "**Programs.**"

2. **TERM**

2.1. The initial term of the Agreement will be for a term of three (3) years ("**Initial Term**") beginning on the Effective Date. The Agreement shall be automatically renewed after the Initial Term for one (1) year ("**Renewal Term(s)**") unless earlier terminated pursuant to the provisions of Section 12.

3. **TIMEFRAME**

3.1. The Parties anticipate a sales and marketing launch in April 2018, with the first Class to start in July 2018. The Classes must meet a minimum and maximum headcount agreed by both parties.

4. **STRUCTURE OF THE PROGRAM AND CLASSES**

4.1. Some Classes, or portions of Classes, shall consist of face-to-face learning conducted in facilities supplied by UTSA. Some Classes, or portions of Classes, are video-based which may include pre-work, supplemental material, and captured lectures from class, but is not intended to replace classroom time. Additional details of the Classes shall be agreed upon by the Parties in the course design phase.

4.2. The Parties agree that the initial location for the face-to-face Classes will be in San Antonio, Texas.

- 4.3. The Parties will target a minimum of four (4) Classes per Program each year during the initial term with specific scheduling of the Classes to be agreed upon by both Parties. If the Programs are successful, additional Classes may be offered during the initial term or the renewal term.
- 4.4. If the Programs are successful, the Parties anticipate marketing other TES programs. However, such additional programs will only be implemented on a written agreement signed by both Parties. TES proposes the following additional (blended online and on campus) programs:
 - (a) Full-time coding boot camp (250 hours +/-);
 - (b) Full-time data analytics boot camp (250 hours +/-); and
 - (c) Additional part-time programs (i.e., Cybersecurity, IT Project Management, etc.) based on demand.

5. TES'S OBLIGATIONS

- 5.1. TES will be responsible for enrolling all Participants in the Classes, however, as noted below in the UTSA obligations, UTSA will support the Program Classes with standard UTSA levels of marketing and publicity reasonably similar to that currently provided for other Extended Ed Office programs. TES will conduct its Class enrollment process in a highly professional, courteous, and skilled manner using the upmost customer service approaches.
- 5.2. TES and UTSA will mutually establish a marketing plan for the Classes. Subject to the terms of this Agreement, specifically including Section 2 of the attached and incorporated Addendum, TES will market the Classes.
- 5.3. TES will select instructors who will be presented to UTSA for approval. Instructors are subject to UTSA approval for any teaching, in any format, in any of the Classes. Instructors are hired 'at will' and paid by TES for the Programs and subject to evaluation by UTSA before any reappointment or new appointments.
- 5.4. TES will provide support services for Participants in the Programs and placement services for Participants in the Programs.
- 5.5. TES will collect all revenue related to Participant enrollment in the Classes as more particularly described below in Section 8.
- 5.6. TES shall provide the course materials required for the Programs. TES shall retain all right, title and interest in and to all course materials, know-how, methodologies, processes, marketing materials, lead data, technologies or other Intellectual Property Rights (as defined below) contained in the course materials and otherwise used in connection with the Programs including any and all additions, improvements, supplements, enhancements or developments thereto. "Intellectual Property Rights" means all patents and industrial property rights, patent applications and registrations, trademarks, trademark applications and registrations, copyrights and

moral rights, copyright applications and registrations, renewals, extensions, continuations, divisions, and reissues of, and applications for any of the rights referred to herein, Trade Secrets, trade names and industrial designs, domestic or foreign, whether arising by statute or common law. "Trade Secrets" means information that is used or may be used in business or for any commercial advantage, derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, is the subject of reasonable efforts to prevent it from becoming generally known, and the disclosure of which would result in harm or improper benefit.

6. UTSA'S OBLIGATIONS

- 6.1. Subject to Section 8.05 and 8.06 of UTSA's Handbook of Operating Procedures located at <http://www.utsa.edu/hop/chapter8/8-6.html>, and its associated policies ("UTSA Space Allocation Policies"), UTSA will provide without charge appropriate classrooms for TES to conduct on-site portions of the Programs. If classroom space is not available, TES and UTSA will collaborate in good faith to establish a mutually agreeable alternative online class. TES acknowledges that as of the Effective Date, it is not required to be licensed in the State of Texas to provide the services provided hereunder to UTSA. UTSA acknowledges that as of the Effective Date, the Programs will not require any specific licensing or accreditation requirements.
- 6.2. TES and UTSA will mutually establish a marketing plan for the Classes. In addition to TES' responsibilities to market the Classes, UTSA will market the Programs according to the Extended Ed Office's standard marketing practices for similar non-credit programs operated by the Extended Ed Office, including providing Program information in the Extended Ed Office's printed materials and on its website. Use of TES' name and marks is subject to the prior written approval of TES, such approval not to be unreasonably withheld.
- 6.3. UTSA agrees to direct to TES (within a reasonable period) those potential Participants that notify UTSA of their desire to enroll in the Classes so that all enrolments can be managed by TES.
- 6.4. The Extended Ed Office will market the Programs to the Extended Ed Office's participant database which will include, at a minimum, a quarterly email ("**Internal Marketing Email**"). TES will create a draft of the Internal Marketing Email and provide it to UTSA. UTSA will transmit and control distribution of the Internal Marketing Email, and final content of the Internal Marketing Email will be at UTSA's sole discretion.
- 6.5. The Extended Ed Office shall not offer any program substantially the same or similar to the Program while this Agreement is in effect (the "**Restricted Period**"). The Extended Ed Office agrees that inclusion of the Classes in the Extended Ed Office's program, and the Program brand "The Coding Bootcamp at University of Texas San

Antonio” (or substantially similar phrase) will be exclusive to TES during the Restricted Period.

- 6.6. In the event that SCHOOL receives a freedom of information act, public records or similar request for TES’ Confidential Information (ref. Section 10), UTSA shall notify TES prior to releasing any such Confidential Information to enable TES to determine whether TES will attempt to object to or limit the disclosure of the requested information.

7. JOINT OBLIGATIONS

- 7.1. Subject to the success of the Classes and the structure for the Programs set forth herein, the Parties acknowledge that there is no inherent restriction on the number of Classes per year. Subject to the terms and conditions of this Agreement, however, the Parties agree that, assuming minimum enrolment targets are met; there will be a minimum of four (4) Classes per Program each year.
- 7.2. TES may choose to offer financial support in the form of special discounts or scholarships to interested, selected Participants. UTSA shall offer financial support to Participants under the same standard practices the Extended Ed Office offers to attendees of other classes operated by the Extended Ed Office.
- 7.3. The Parties agree that the optimal price point for the Classes will be determined by mutual agreement between the Parties. Any amendment to the optimal price point must be agreed in writing (which may include email).
- 7.4. Subject to the requirements of this Section 7.4 and to Section 2 of the attached and incorporated Addendum, TES will be permitted limited use of UTSA’s email system and use of UTSA’s email domain name “@utsa.edu” solely for TES’ completion of the Services in Section 1.1(v). Any access by TES to UTSA’s email system, and any access to UTSA computers, servers or databases except those that are available to the general public through the Internet must be approved in advance in writing (email acceptable) by UTSA’s Information Security Office, and may require approval from other appropriate UTSA technology personnel. If using UTSA’s email system as described in this Section, TES must comply with all applicable UTSA Rules (ref. Section 3 of Addendum), specifically including UTSA’s Security Standards and Acceptable Use Policies located at <http://www.utsa.edu/oit/FacultyAndStaffServices/Policies/index.html>. TES will not connect any technology equipment or devices to UTSA’s computer network or UTSA’s information resources system without the prior written consent of the UTSA’s Information Security Office. Notwithstanding the foregoing, TES instructors and students may connect to UTSA’s wifi network in connection with Class and related activities.

8. FINANCIAL ARRANGEMENTS

- 8.1. TES Compensation. TES will be compensated for the TES services provided under this Agreement in the following manner. TES will collect all revenue related to Participant enrollment in the Classes, and TES will retain eighty percent (80%) of all Adjusted Gross Revenue. “**Adjusted Gross Revenue**” means all revenue received from individuals or entities desiring to participate in the Classes, less (i) any applicable sales tax; (ii) ADA Costs (as defined below); and (iii) amounts actually refunded in accordance with the Program’s published refund policy or otherwise agreed by the Parties. TES shall remit to UTSA the remaining twenty percent (20%) of the Adjusted Gross Revenue (“**University Revenue**”) no later than forty-five (45) days after the end of each calendar quarter. For purposes hereof, “**ADA Costs**” shall mean the direct cost of complying with the American's with Disabilities Act for accommodations made to students in the Program.
- 8.2. Reimbursement to UTSA on Termination. Upon expiration or termination of this Agreement for any reason, TES will provide UTSA the Financial Report (defined below) and pay UTSA the University Revenue by the later of (i) forty-five (45) days after the expiration or termination of this Agreement; or (ii) thirty (30) days after the Close Out Period.

9. REPORTING AND PAYMENT TERMS

- 9.1. Revenue received from the Programs will be recorded in TES’ general ledger and will be collected and calculated by TES in accordance with generally accepted accounting principles. TES will generate and provide UTSA a quarterly revenue report (“**Financial Report**”) listing the revenue received from the Programs and the method for calculating Adjusted Gross Revenue. The Financial Report will be provided to UTSA by TES no later than forty-five (45) days after the end of each calendar quarter. UTSA understands and acknowledges that TES considers the Financial Report to be TES’ proprietary and confidential information, and to the extent authorized by applicable law, UTSA will maintain the confidentiality of Financial Reports in accordance with Section 10.
- 9.2. All of TES’ records pertaining to Adjusted Gross Revenue and University Revenue will be maintained in TES’s offices (“**Records Location**”). During the Term and for a period of one (1) year thereafter, UTSA will have the right to inspect and audit (during normal business hours at the Records Location and no more than once per contract year) records of TES related to the revenue received pursuant to this Agreement, after reasonable written notice (but in any event on not less than 10 days prior written notice) to TES. Should an audit reveal any underpayments in University Revenue due to UTSA and TES disagrees with the UTSA’s findings, TES shall have thirty (30) days to review any findings by UTSA and provide documentation that refutes the findings of the UTSA. TES and UTSA will work in good faith to resolve any disputes of the audit

findings, and neither Party will unreasonable withhold its approval of the findings. TES will remit any funds due to UTSA within 15 days of the Parties mutual agreement on the audit findings. In addition, if any agreed upon underpayments equal more than five (5) percent of the actual amount due to UTSA in any contract year, the cost of the audit shall be at TES' expense and TES shall promptly reimburse UTSA for the out-of-pocket audit costs, not to exceed \$5,000. In the event an audit is undertaken by UTSA, TES will, to the extent available, provide auditors with reasonable working space and access to TES' records as described in this Section. UTSA understands and acknowledges that TES considers the results of any such audit to be TES' proprietary and confidential information, and to the extent authorized by applicable law, UTSA will maintain the confidentiality of the audit results in accordance with Section 10.

10. CONFIDENTIALITY

10.1. The term **Confidential Information** means a party's non-public information considered intellectual property, proprietary, or a trade secret to the disclosing Party that is not generally known. Confidential Information specifically excludes information that is required to be disclosed pursuant to any applicable statute, regulation or order of a court of competent jurisdiction, including without limitation the Texas Public Information Act ("**TPA**"), Chapter 552, *Texas Government Code*. For purposes of clarity, the terms and conditions of this Agreement are not considered protected or confidential information under TPA.

10.2. Each Party undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by Section 10.3.

10.3. Each Party may disclose the other Party's Confidential Information:

- (a) To its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 10; and

10.4. No Party shall use any other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

11. INDEMNIFICATION.

11.1. To the extent authorized by the Constitution and the laws of the State of Texas, each Party will indemnify and hold the other harmless from and against any and all damages, losses, liabilities, directly resulting from (and will defend the other Party from) any claim, suit, dispute, or proceeding brought by a third party directly arising

from or relating to the first party's infringement of any third party intellectual property rights in performing the activities contemplated under this Agreement ("IP Performance"). For those Claims which the indemnified party wishes the indemnifying party to defend, the indemnified party will (i) provide prompt notice to the other Party of the existence of such Claim (and in any event, within 7 days of it learning of the existence of such Claim); (ii) tender control of the defense to the indemnifying party, provided that the indemnifying party may not enter into any settlement affecting the indemnified party's interests without the indemnified party's consent (such consent not to be unreasonably withheld or delayed); and (iii) provide reasonable assistance to the indemnifying party in the defense of such Claim. The indemnified party may participate in the defense with counsel of its choice at its own expense. If the indemnifying party believes that the IP Performance may become the subject of a third-party infringement claim, it may (a) obtain a license to continue providing such IP Performance; (b) modify the IP Performance such that they are no longer infringing; or (c) if neither of the foregoing is reasonably practicable after the indemnifying party's application of commercially reasonable efforts, terminate this Agreement upon written notice to the other Party. The indemnification obligation described in this Section 11.1 represents the indemnified party's sole and exclusive remedy, and the indemnifying party's entire liability, arising from or relating to any infringement of third-party intellectual property rights. Without limiting the generality of the foregoing, the indemnifying party may apply for strike-off (or similar relief in any jurisdiction) of any vexatious claims which counsel advises have no reasonable prospect of success.

- 11.2. To the extent authorized by the Constitution and the laws of the State of Texas, each Party will indemnify and hold the other harmless from and against any and all damages, losses, liabilities, costs and expenses resulting from (and will defend the other Party from) any claim, suit, dispute, or proceeding brought by a third party arising from or relating to (i) the gross negligence or willful misconduct of the indemnifying party or its directors, officers, employees, agents or representatives in connection with this Agreement or their performance ("Contract Performance"); or (ii) any breach by the indemnifying party of any contract between the indemnifying party and any third party in connection with the Contract Performance or any representations or warranties that the indemnifying party may have made to third Parties regarding the Contract Performance; (iii) and/or any breach by the indemnifying party of any provision of this Agreement or any applicable law or regulation, (iv) any information that the indemnifying party delivers to the indemnified party under this Agreement (save for de minimis changes, typographical errors and honest human errors provided that such errors are rectified as soon as discovered); (v) any disputes arising from prospective Participants, enrolled Participants, or other Participants arising from the Contract Performance caused by or relating to the negligence or willful misconduct of the indemnifying party; and (vi) any personal injury or property damage suffered by one Party's employees or contractors while present on the other Party's premises, EXCEPTING IN ALL CASES any claims arising from or relating to the indemnified party's negligence or willful

misconduct. To the extent authorized by the Constitution and the laws of the State of Texas, for those Claims which the indemnified party wishes the indemnifying party to defend, the indemnified party will (i) provide prompt notice to the indemnifying party of the existence of such Claim; and (ii) provide reasonable assistance to the indemnifying party in the defense of such Claim. The indemnified party may participate in the defense with counsel of its choice at its own expense. To the extent authorized by the Constitution and the laws of the State of Texas, without limiting the generality of the foregoing, the indemnifying party may apply for strike-off (or similar relief in any jurisdiction) of any vexatious claims which counsel advises have no reasonable prospect of success.

- 11.3. To the extent authorized by the Constitution and the laws of the State of Texas, no Party shall be liable to the other Party for any lost profit or consequential, exemplary, punitive, statutory or other special damages, and each Party hereby unconditionally, expressly and forever waives any right it may now or hereafter have against the other Party respecting any and all such damages, in each case: (i) whether through action, suit, counterclaim or otherwise; (ii) whether in contract, tort, strict liability, indemnity, reimbursement or otherwise; (iii) whether or not it has been advised of the possibility of any such damages; (iv) whether or not any other remedy is available or enforceable under this Agreement or applicable law. .

12. TERMINATION

- 12.1. Subject to Section 12.4, either Party may terminate this Agreement for convenience at any time after the end of the Initial Term by providing the other Party at least one hundred twenty (120) days written notice. Either party may provide notice of non-renewal at the end of the Initial Term by providing one hundred twenty (120) days prior written notice of its intent not to renew.
- 12.2. A Party may terminate this Agreement effective immediately upon its delivery of a termination notice in the event of a material breach of this Agreement by the other Party which breach is not cured within 30 days of the breaching Party's receipt of a written notice concerning the breach; provided that, the breach is through no fault of the terminating party.
- 12.3. Either party may immediately cancel or postpone a Class or Program if continuation of the Class or Program would reasonably cause any safety or security concerns to Participants or other individuals impacted by the Classes or Program.
- 12.4. A Party may terminate this Agreement with reasonable notice if there is any change in law that prohibits or renders impracticable the continued performance of this Agreement.

- 12.5. In the event of any termination or expiration of this Agreement, the Parties shall work together in good faith to allow those Participants already enrolled in Classes prior to the date of termination to complete the Classes.

13. MISCELLANEOUS PROVISIONS

- 13.1. This Agreement along with its attached Addendum represent the entire understanding between UTSA and TES concerning the subject matter hereof and supersede all prior negotiations, representations and agreements between them, both written and oral, concerning the subject matter hereof. This Agreement may only be modified pursuant to a written amendment signed by duly authorized signatories of the parties. Notwithstanding the foregoing, the Parties may add additional Programs to this Agreement by written agreement (email with reference to this provision Section 13.1 being acceptable). Implementation of any new Programs under this Section will be completed in accordance with the terms and conditions of this Agreement.
- 13.2. The formation of this Agreement, its validity, performance of this Agreement, and the settlement of any disputes between the parties hereunder, shall be governed by the laws of the State of Texas, excluding its conflict of law provisions.
- 13.3. If any provision of this Agreement shall be held by a tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect.
- 13.4. The waiver by any party of a default under any provision of this Agreement shall not be construed as a waiver of any subsequent default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of a party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.
- 13.5. Headings in this Agreement are solely for convenience and shall not be used to define or construe any provision hereof. Ambiguities, if any, in this Agreement shall be reasonably construed in accordance with all relevant circumstances, including, without limitation, prevailing practices in the industry of the parties in the place where the contract is to be performed.
- 13.6. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same instrument. Execution and delivery of this Agreement by delivery of a facsimile or electronically recorded copy (including a .pdf file) bearing a copy of the signature of a party shall constitute a valid

and binding execution and delivery of this Agreement by such party. Such copies shall constitute enforceable original documents.

- 13.7. The Parties to this Agreement shall be and remain at all times independent contractors, neither being the employee, agent, representative, joint venture partner, or sponsor of the other in their relationship under this Agreement and neither Party may bind the other Party in any agreement with a third party or otherwise act on behalf of or in the name of the other Party in any fashion without the express written consent of the other Party.
- 13.8. Neither Party shall subcontract any of its obligations pursuant to this Agreement without the express written consent of the other party, which is not to be unreasonably withheld; provided, however, that this Section allows (i) the use by UTSA of non-employee independent professional consultants , and (ii) an assignment of this Agreement to a successor in interest via stock or asset purchase or merger. In the event that a Party subcontracts any work or services under this Agreement or delegates such work or services in accordance with this provision, such Party shall be fully responsible for the compliance of the subcontractor or consultant with this Agreement.
- 13.9. All notices under this Agreement shall be in writing and shall be served either personally, by overnight delivery service, by registered or certified mail, return receipt requested, or by email, addressed to the parties as set forth above. Any notice shall be deemed delivered (a) three (3) business days after notice is mailed, or (b) if personally delivered, when acknowledgment of receipt is signed, or (c) if given by a reputable overnight courier, the next business day after deposit with the courier (provided that proof of delivery is obtained), or (d) if sent by e-mail, upon actual delivery as evidenced by printed confirmation of transmission. In the case of e-mail, notices will be sent to:

For UTSA: frank.salazar@utsa.edu

For TES: aspivak@trilogyed.com

- 13.10. Neither party will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TRILOGY EDUCATION SERVICES, INC.

Dan Sommer

....., Daniel Sommer, CEO

duly authorized for and on behalf of **TES**

THE UNIVERSITY OF TEXAS SAN ANTONIO

DocuSigned by:

Kathryn Funk – Baxter

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Kathryn Funk – Baxter, Vice President for Business Affairs

duly authorized for and on behalf of **UTSA**

**ADDENDUM TO
SERVICES AGREEMENT
between**

Trilogy Education Services, Inc. and The University of Texas at San Antonio

The following terms and conditions are incorporated into and form a part of that certain Services Agreement (the "**Agreement**") between Trilogy Education Services, Inc., ("**TES**") and The University of Texas at San Antonio ("**UTSA**"), to which such terms and conditions are attached for all purposes.

1. Statutory Provisions

- 1.1 **Tax Certification.** If TES is a taxable entity as defined by Chapter 171, *Texas Tax Code*, then TES certifies that it is not currently delinquent in the payment of any taxes due under such Chapter, or that TES is exempt from the payment of those taxes, or that TES is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 1.2 **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, TES agrees that any payments owing to TES under the Agreement may be applied directly toward any debt or delinquency that TES owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 1.3 **Texas Family Code Child Support Certification.** Pursuant to Section 231.006, *Texas Family Code*, TES certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 1.4 **TES Certification regarding Boycotting Israel.** Pursuant to Chapter 2270, *Texas Government Code*, TES certifies TES (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. TES acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 1.5 **TES Certification regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, TES certifies TES (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. TES acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 1.6 **Texas Public Information Act.** Notwithstanding any terms to the contrary, TES understands and acknowledges that UTSA is an agency of the State of Texas and subject to the provisions of the Texas Public Information Act, Chapter 552, *Texas Government Code*. Nothing in this Agreement shall be construed to prevent or restrict UTSA from full compliance with such Act.
- 1.7 **Dispute Resolution.** To the extent that Chapter 2260, *Texas Government Code*, is applicable to the Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by UTSA and TES to attempt to resolve any claim for breach of contract made by TES that cannot be resolved in the ordinary course of business. The chief business officer of UTSA will examine TES's claim and any counterclaim and negotiate with TES in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of the Agreement by UTSA nor any other conduct, action or inaction of any representative of UTSA relating to the Agreement constitutes or is intended to constitute a waiver of UTSA's or the state's sovereign immunity to suit; and (ii) UTSA has not waived its right to seek redress in the courts.

- 1.8 **Access by Individuals with Disabilities.** TES represents and warrants (the “EIR Warranty”) that the electronic and information resources and all associated information, documentation, and support that it provides to UTSA under the Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapters 206 and 213 of the Texas Administrative Code (“TAC”). To the extent TES becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Warranty, then TES represents and warrants that it will, at no cost to UTSA, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Warranty. Should UTSA notify TES in writing that the EIRs, or any portion thereof, do not comply with the EIR Warranty, and such non-compliance continues for a period of sixty days after such written notice to TES, then UTSA may terminate this Agreement and TES will refund to the UTSA, within thirty (30) days after the termination date, a prorated amount of any fees paid by UTSA for Services not yet properly rendered.
- 1.9 **HUB Subcontracting Plan.** TES will use good faith efforts to subcontract work performed under the Agreement in accordance with the Historically Underutilized Business Subcontracting Plan (“HSP”) as submitted on August 10, 2017. Except as specifically provided in the HSP, TES will not subcontract any of its duties or obligations under the Agreement, in whole or in part. The Agreement is subject to 34 TAC Section 20.14. TES will comply with all of its duties and obligations under 34 TAC Section 20.14. In addition to other rights and remedies, University may exercise all rights and remedies authorized by 34 TAC Section 20.14.
- 1.10 **State Auditor’s Office.** TES understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor’s Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. TES agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records reasonably requested. Should an audit reveal any underpayments in University Revenue due to UTSA and TES disagrees with the auditor’s findings, TES shall have thirty (30) days to review any findings by the auditor and provide documentation that refutes the findings of the auditor. TES and Auditor will work in good faith to resolve any disputes of the audit findings, and neither party will unreasonably withhold its approval of the findings. TES will remit any funds due to UTSA within 15 days of the Parties mutual agreement on the auditor’s findings.
- 1.11 **Limitations.** THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF CLIENT (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS’ FEES; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE “LIMITATIONS”), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON CLIENT EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
2. **UTSA Marks; Limited Trademark Use License.** TES understands and acknowledges that the Board of Regents of The University of Texas System (the “Board”) owns all rights to the name, logos, and symbols of UTSA (“UTSA Marks”). All rights to the UTSA Marks will at all times remain the property of the Board. Subject to the terms and conditions of this Agreement, The Board, through UTSA will grant to TES a nonexclusive right during the Initial Term and any Renewal Terms to use those specific

UTSA Marks listed in **Schedule 1** to this Addendum (“**Designated Marks**”) that are directly required to complete TES’s obligations in this Agreement, and which are approved for use in accordance with this Section. All use of the Designated Marks will be in a manner that (i) complies with applicable laws; (ii) UTSA Rules applicable to UTSA Marks, including UTSA’s Brand Identity Guidelines at <https://www.utsa.edu/ucm/resources/identity/index.html>; (iii) is consistent with TES’s use of other university marks under similar situations; and (iv) will not tarnish the Designated Marks.

Any use of Designated Marks by TES must receive prior written approval (email acceptable) from UTSA’s Executive Director of Marketing or his/her designees (“**Marketing Director**”). The contact information for UTSA’s Marketing Director is Brett Calvert at brett.calvert@utsa.edu; 210-458-6160.

The parties acknowledge that once UTSA approves TES’ use of a Designated Mark in accordance with the terms of this Agreement, such approval will be deemed granted throughout the term of the Agreement, provided that TES’ future use of the specific approved Designated Mark remains within the parameters of the original UTSA approval. UTSA acknowledges and agrees that TES will not be responsible for any non-performance, or any delay in performance, on the part of TES caused by any unreasonable failure or delay by UTSA to provide approvals of Designated Marks as provided in this Section.

3. **Access to Premise.** TES will conduct all its operations on UTSA’s premises in conformity with all applicable federal and state laws, rules and regulations, local ordinances, and UTSA Rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs. For purposes of this Addendum, “**UTSA Rules**” means (i) the Rules and Regulations of the Board of Regents of The University of Texas System (the “Board”) (found at <http://www.utsystem.edu/bor/rules.htm> and referred to herein as the (“Regents’ Rules”); (ii) the policies of The University of Texas System (found at <http://www.utsystem.edu/bor/procedures/policy/>); (iii) the institutional rules and regulations and policies of UTSA (which may be found at www.utsa.edu/policies.html); (iv) UTSA’s Standards of Conduct Guide, which is located at <http://utsa.edu/acrs>; and (v) the UTSA’s parking rules and regulations (which may be found at <http://utsa.edu/auxiliary/parking.html>).
4. **Payment Card Industry Standards.** UTSA is required to validate compliance on a periodic basis with all applicable Payment Card Industry Data Security Standards (collectively, “PCI DSS”), including Payment Application Data Security Standards (collectively, “PA DSS”), promulgated by the Payment Card Industry Security Standards Council (“PCI SSC”). The compliance validation process requires UTSA to undergo an assessment of (1) all system components used to process, store or transmit cardholder data, and any other components that reside on the same network segment as those system components, as well as (2) all related processes used to process, store or transmit cardholder data, (collectively, “System Components in Scope”). Some or all System Components in Scope have been outsourced to TES under this Agreement. TES will cause its agents and subcontractors to comply with all terms of this Section applicable to TES. TES will achieve and maintain compliance under the current versions of PCI DSS and PA DSS published on the PCI SSC website for service providers and payment applications. As evidence of compliance, TES will provide to UTSA on or before the Effective Date and within ten (10) days after each anniversary of the Effective Date during the Term of this Agreement, a copy of TES’ annual attestation of compliance signed by a Qualified Security Assessor as more particularly described on the PCI SSC website.
5. **Insurance.** In the event TES, its employees, agents or subcontractors enter premises occupied by or under the control of UTSA in the performance of the Agreement, TES agrees that it (i) will maintain public liability and property damage insurance in reasonable limits covering its obligations under the Agreement, and (ii) will maintain worker’s compensation coverage (either by insurance or if qualified pursuant to law, through a self-insurance program) covering all employees performing the Agreement on premises occupied by or under the control of UTSA.
6. **Errors and Omissions Insurance.** TES will carry Errors and Omissions Insurance, including Cyber Liability, with limits of not less than \$2,000,000 per occurrence (endorsed on the E&O policy) for each Web Site that provides, at a minimum, coverage for: Liability for security or privacy breaches, including loss or unauthorized access to UTSA’s Data; Costs associated with a privacy breach, including

consumer notification, customer support, and costs of providing credit monitoring services; Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties; Costs of restoring, updating or replacing data; Liability losses connected to network security, privacy, and media liability; and, "Insured versus insured" exclusion prohibited.

7. **Responsibility for Individuals Performing Services; CBCs.** TES is responsible for the performance of all its employees or permitted subcontractors providing services under this Agreement. TES will not knowingly assign any Instructor or any other individual performing services under this Agreement who has a history of criminal conduct unacceptable for a university campus, including violent or sexual offenses or identity or personal property theft offenses.

TES shall conduct an appropriate Criminal Background Check ("**CBC**") on all individuals performing services under this Agreement. CBC shall include verification of such individual's address(es) and social security number.

Addendum Controlling. In the event there is a conflict between the terms and conditions of the Agreement and this Addendum, this Addendum will control.

TES

TRILOGY EDUCATION SERVICES, INC.

Dan Sommer

By

Dan Sommer

Name

CEO

Title

2/15/2018 | 6:22 PM EST

Date

UTSA

THE UNIVERSITY OF TEXAS AT SAN ANTONIO

Kathryn Funk - Baxter

By

851CED66D9EE43A...

Kathryn Funk-Baxter

Name

Vice President for Business Affairs

Title

2/14/2018

Date

SCHEDULE 1 TO ADDENDUM TO SERVICES AGREEMENT

DESIGNATED MARKS

Word Marks



Domain Name

E-mail address utilizing @utsa.edu

**ADDENDUM 2
SERVICES AGREEMENT
between**

Trilogy Education Services, Inc. and The University of Texas at San Antonio

The following terms and conditions are incorporated into and form a part of that certain Services Agreement, which includes the first Addendum (collectively, the "**Agreement**"), entered into effective as of February 14, 2018, by and between Trilogy Education Services, Inc., ("**TES**") and The University of Texas at San Antonio ("**UTSA**"). The terms and conditions of this Addendum 2 are attached to the Agreement for all purposes. This Addendum 2 is effective as of March 15, 2018.

- 1. Program Website.** Subject to the terms of the Agreement, TES will develop and maintain a specific website dedicated exclusively to (i) marketing and promoting the Programs; (ii) providing to Participants and potential Participants applicable and appropriate information about the Programs; (iv) enrolling Participants in the Programs; and (v) providing other appropriate and applicable information and services related to the Programs (collectively, the "**Program Website**"). TES will furnish all management, labor, equipment, software and related services necessary to develop, operate and maintain the Program Website.
- 2. Standards.**
 - 2.1 Applicable Laws; University Operations.** TES will operate the Program Website in accordance with all applicable national, federal, and state, laws, regulations, codes, ordinances and orders (collectively, the "**Applicable Laws**"). TES will operate the Program Website without interfering in any way with the activities of UTSA's faculty, students, staff, visitors or invitees; provided, however, seeking the approvals required by Section 3 shall not be deemed to be interfering.
 - 2.2 Operational Measures.** TES will ensure that the Program Website is fully operational and functional prior to publicly marketing or launching the Programs. TES will operate and maintain the Program Website in a professional manner so that the Program Website performs in accordance with prevailing industry standards for other leading extended education providers. TES will ensure that the Program Website is fully operational and functional twenty-four (24) hours a day, seven (7) days a week, 365/366 days a year, with no more than one percent (1%) down time in any contract year.

TES will at all times during the term of the Agreement maintain a staff of properly trained and experienced personnel to operate the Program Website. TES will provide administrative, purchasing, and personnel supervision for the proper operation of the Program Website.
 - 2.3 Security of User Data.** In operation of the Program Website, TES may receive, or have access to, confidential or sensitive data of Participants, potential Participants, and related individuals or entities, and such data may include personally identifiable payment transaction data (collectively "**User Data**"). TES will ensure that the technology and systems related to the Program Website safeguard User Data according to reasonable administrative, physical and technical standards such as standards established by the National Institute of Standards and Technology, PCI SSC (ref. first Addendum) and the Center for Internet Security that are no less rigorous than the standards by which TES protects its own confidential information. TES will continually monitor its technology and systems related to the Program Website and take any action necessary to assure that the technology and systems are maintained in accordance with all Applicable Law and the terms of this Agreement.
 - 2.4 Current Technology.** TES will ensure that the technology utilized in the Program Website is kept updated and maintained to industry standards consistent with TES' profession and with similar websites maintained by other leading extended education providers. TES will collaborate with UTSA to ensure the Program Website utilizes all reasonable advantages of technology in its operations.

3. **UTSA Marketing Director Approval.** So that UTSA may protect its goodwill associated with and prevent tarnishing of the Designated Marks, the content, layout and design of the Program Website will be subject to written approval (email acceptable) by the UTSA Marketing Director (ref. first Addendum). UTSA's approval will not be unreasonably withheld. Without limiting the foregoing, all use of UTSA's name and UTSA Marks are subject to the terms, conditions, and approval requirements of the Agreement.
4. **Forms of Payment for Customer Sales Transactions.** TES will accept edebit (or similar system), major credit cards (including Visa, MasterCard, American Express and Discover), debit cards, and other commercially accepted payment forms from Participants as payment for the Classes.
5. **Privacy Policy.** TES will establish and maintain a privacy policy ("**Privacy Policy**") for the Program Website. TES will update and maintain the Privacy Policy for the Program Website to reflect the parties' rights and obligations and as required by **Applicable Laws**, and to be factually accurate. TES will abide by the privacy policy for the Program Website, as may be amended from time to time. TES will be solely responsible for maintaining all opt out or other consent designations from Participants and will provide such information to the Participants as may be necessary hereunder.
6. **Website Links.**
 - 6.1 **Link from UTSA Extended Ed Office Website.** UTSA will provide, or cause to be provided, a link to the Program Website on the website of the Extended Ed Office.
 - 6.2 **Link from Program Website.** TES will maintain a direct Internet link on the Program Website to the Extended Ed Office Website.
7. **Defined Terms; Validity.** All capitalized terms used in this Amendment that are not otherwise defined have the respective meanings ascribed to such terms in the Agreement.

Agreement Controlling. In the event there is a conflict between the terms and conditions of the Agreement and this Addendum 2, the Agreement will control.

TES

TRILOGY EDUCATION SERVICES, INC.

Dan Sommer

By

Dan Sommer

Name

CEO

Title

3/15/2018 | 11:47 AM EDT

Date

UTSA

THE UNIVERSITY OF TEXAS AT SAN ANTONIO

Richard A. Wollney Jr.

By

Richard A. Wollney Jr.

Name

Business Contracts Manager

Title

3/15/2018

Date