

C100037

AGREEMENT made this 2nd day of February, 2017, by and between STATE UNIVERSITY OF NEW YORK, a corporation and existing under the laws of the State of New York, with its principal office located at State University Plaza, Albany, New York 12246, and State University of New York at Binghamton a corporation organized under the laws of the State of New York hereinafter referred to as "SUNY" and Academic Partnerships, LLC., located at 600 North Pearl Street, Suite 900, Dallas, Texas 75201, hereinafter referred to as "Contractor."

WHEREAS, SUNY requires the services as more fully set forth in the Request for Proposal (RFP 16/17/018 awarded on the basis of the best value to the University meeting the criteria, dated November 8, 2016, incorporated herein and made a part hereof ("RFP"); and

WHEREAS, SUNY has determined that it is necessary to have Academic Partnerships, LLC provide such services; and

WHEREAS, Academic Partnerships, LLC is qualified to provide such services.

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein set forth, the parties hereto agree as follows:

1. Contractor agrees that it shall provide the services set in the RFP, which provide and Online Nursing Program for the campus in accordance with the provision of the RFP and Contractor's response to RFP on January 9, 2017, attached hereto and made a part hereof (the "Response")

In consideration of the above, SUNY shall pay the contractor in accordance with the rates and amounts specified in the proposal submitted in the response which benefit SUNY.

2. This agreement shall consist of :
 - a. RFP Issued by SUNY on November 8, 2016
 - b. The proposal submitted by the Contractor on January 9, 2017
 - c. Exhibits A and A-1
 - d. *Tax and Finance Sales Tax Certification form ST-220 CA is completed and attached to and incorporated in this agreement (*if the value of the agreement is \$100,000 or more).
 - e. Academic Partnerships LLC, service agreement
3. Hierarchy of Precedent:

In the event of a conflict of interpretation between the parties, the order of the following documents shall prevail:

- f. Exhibits A and A-1
 - g. Academic Partnerships LLC, service agreement ("Service Agreement")
 - h. This agreement
 - i. The RFP issued by SUNY on November 8, 2016
 - j. Tax and Finance Sales Tax Certification for ST-220 CA is completed and attached to and incorporated in this agreement (*if the value of the agreement is \$100,000 or more)
 - k. The Proposal submitted by the Contractor on January 9, 2017
- 4. Contractor will submit billing as identified in the Service Agreement, and payments shall also be made as identified in the Service Agreement.
 - 5. Contractor will meet with appropriate SUNY personnel in order to obtain the information necessary to fulfill its service responsibilities as detailed in attachments.
 - 6. Contractor agrees that all work produced for the exclusive use of SUNY, and the product of all services rendered pursuant to this agreement which are exclusive to SUNY, shall be the property of SUNY. Contractor and SUNY shall abide by the confidentiality clauses in the Service Agreement.
 - 7. Contractor shall comply with all laws, rules, orders, regulations, and requirements of Federal, State, and Municipal governments applicable thereto.
 - 8. The relationship of the parties arising out of this agreement shall be that of independent Contractor. Contractor shall not, as a result of this agreement, be considered an employee of SUNY or the State of New York, nor shall Contractor represent that such employee relationship exists arising out of this contract.
 - 9. In the event of any dispute regarding this agreement, including but not limited to the implementation and delivery of the services to be provided in this agreement, the laws of the State of New York shall be applied.
 - 10. Contractor shall communicate with SUNY at Binghamton as often as may be required in order to keep SUNY at Binghamton fully apprised of the progress of the project hereunder.
 - 11. Unless modified as provided herein, this contract shall begin on the Effective Date in the Service Agreement (as defined therein) and end on October 15, 2023 (which is the five year anniversary of the mid-point of the program launch schedule), with two, three-year renewals.
 - 12. The State shall have the right to terminate this contract early as stipulated in the Service Agreement.

13. The Contractor shall at all times during the contract term remain responsible. The Contractor agrees, if requested by [the Head of State Agency/Authority] or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
14. In the event that the [Head of State Agency/Authority] or his or her designee, in his or her sole discretion, reasonably believes that he or she has discovered information that calls into question the responsibility of the Contractor, then the Parties shall follow the dispute resolution procedures as identified in the Service Agreement.
15. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate {head of State Agency/Authority] or his or her designee at the Contractor's expense where the Contractor is determined by the {Head of State Agency/Authority} or his or her designee to be non-responsible. In such event, he [Head of State Agency/Authority] or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.
16. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa and State Technology Law, Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of contractor's agents, officers, employees, or subcontractors.
17. State Finance Law Section (163) (4) (g) imposes certain reporting requirements on contractors doing business with New York State. In furtherance of these reporting requirements, the Contractor agrees to complete and submit an initial planned employment data report and annual employment report, if requested by SUNY, which are attached as Forms A and B respectively.
18. This agreement constitutes the entire agreement of the parties hereto and all previous communications between the parties, whether written or oral, with reference to the subject matter of this contract are hereby superseded.
19. Contractor agrees that SUNY or its designee, after final payment under this agreement, shall have access to and the right to examine any books, documents, papers, and records of Contractor involving the work to be performed hereunder for a six-year period after the date of the last service payment by SUNY at Binghamton.
20. Any notice to either party hereunder must be in writing, signed by the party giving it, and shall be served either personally or by registered mail return receipt requested addressed as follows:

UNIVERSITY:

State University of New York at Binghamton
P.O. Box 6000
Binghamton, New York 13902-6000
Attn: Matthew Schofield, Director of Procurement

TO CONTRACTOR:

Academic Partnerships, LLC
600 North Pearl Street, Suite 900
Dallas, Texas 75201
Attn: Chief Financial Officer

or to such other address as may be hereafter designated by notice. All notices become effective only when by the addressee.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ACADEMIC PARTNERSHIPS, LLC
(CONTRACTOR)

By: [Signature]
Printed Name: Jeff Dawson
Title: Chief Financial Officer

Attach notarization form.

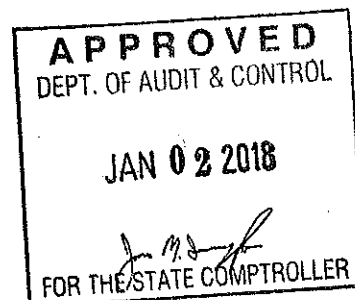
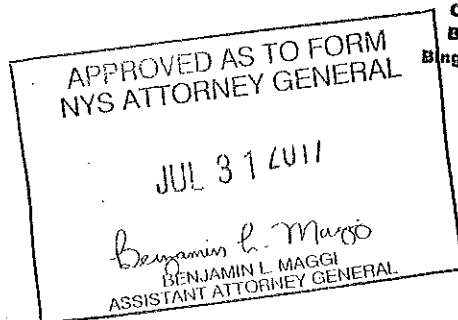
STATE UNIVERSITY OF NEW YORK
AT BINGHAMTON

By: [Signature]
Printed Name: _____
Title: President/Designee

Michael F. McGoff, Ph.D.
Senior Vice Provost and
Chief Financial Officer
Binghamton University
Binghamton, NY 13902-6000

APPROVED AS
TO FORM

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Standard Contract Clauses

State University of New York

EXHIBIT A

February 11, 2014

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a Contractor, licensor, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **PROHIBITION AGAINST ASSIGNMENT** Except for the assignment of its right to receive payments subject to Article 5-A of the State Finance Law, the Contractor selected to perform the services herein are prohibited in accordance with Section 138 of the State Finance Law from assigning, transferring, conveying, subletting or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and attempts to do so are null and void. Notwithstanding the foregoing, SUNY may, with the concurrence of the New York Office of State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of a contract let pursuant to Article XI of the State Finance Law if the assignment, transfer, conveyance, sublease or other disposition is due to a reorganization, merger or consolidation of Contractor's its business entity or enterprise and Contractor so certifies to SUNY. SUNY retains the right, as provided in Section 138 of the State Finance Law, to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract, and to require that any Contractor demonstrate its responsibility to do business with SUNY.

3. **COMPTROLLER'S APPROVAL.** (a) In accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements.

(b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph (3)(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph (3)(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph (3)(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph (3)(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph (3)(a) above, when as so amended, the contract exceeds the threshold amounts stated in Paragraph (b) herein. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or

for a purchase order or other transaction issued under such centralized contract.

(c) Any contract that requires Comptroller approval shall not be valid, effective or binding upon the State University until it has been approved by the Comptroller and filed in the Comptroller's office.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work

contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by SUNY of any SUNY-approved sums due and owing for work done upon the project.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to SUNY a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 *et seq.*) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six

(6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as SUNY and its representatives and entities involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State University of New York is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the State University of New York contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

(a) In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition,

construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(1) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrades, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(2) at SUNY's request, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(3) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(b) Contractor will include the provisions of "1", "2" and "3", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. SUNY shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit A, the terms of this Exhibit A shall control.

14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach

thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certification, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **MacBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165(5) of the State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. **OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St., 7th Floor
Albany, NY 12245
Tel: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-

owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business
Development
633 Third Avenue
New York, NY 10017
212-803-2414

email: mwb certification@esd.ny.gov
<https://ny.newnycorps.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to SUNY;

(b) The Contractor has complied with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Search Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that SUNY may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with SUNY in these efforts.

21. RECIPROCITY AND SANCTIONS

PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this

provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal or similar services, then in accordance with Section 163(4-g) of the State Finance Law, the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT. In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

25. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law

Section 5-a or if during the term of the contract, the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if SUNY determines that such action is in the best interests of the State.

27. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:
<http://www.oqs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY

28. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

29. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

1. **DEFINITIONS.** The following terms shall be defined in accordance with Section 310 of the Executive Law:

STATE CONTRACT herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

SUBCONTRACT herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is

undertaken or assumed by a business enterprise not controlled by the prime contractor.

WOMEN-OWNED BUSINESS ENTERPRISE herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract

may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

MINORITY-OWNED BUSINESS ENTERPRISE herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

MINORITY GROUP MEMBER shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples

of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

CERTIFIED ENTERPRISE OR BUSINESS shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

2. TERMS. The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University:

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the

Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on State Contracts; (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded equal employment opportunities without discrimination; (iii) At the request of the University the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Form 108 - Staffing Plan To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(e) Form 112 - Workforce Employment Utilization Report ("Workforce Report")

(i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to SUNY of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

(ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

(iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or

subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

(f) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and

shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(g) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(h) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(i) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(j) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(k) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

3. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority-and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value

added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

4. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN.

The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through

distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

5. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority-

and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

6. MWBE Utilization Plan.

(a) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan prior to the execution of the contract.

(b) MWBE Utilization Plan (Form 7557-107).

Contractors are required to submit a Utilization Plan on Form 7557-107 with their bid or proposal. Complete the following steps to prepare the Utilization Plan:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. insert a description of the contract scope of work which the Contractor intends to structure to increase the participation by NYS Certified minority- and women-owned enterprises on the State contract;
- iii. insert the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority- or women-owned business; and

(c) Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the SUNY University-wide MWBE Program Office.

(d) The University will review the MWBE Utilization Plan and will issue the Contractor a written notice of acceptance or deficiency within twenty (20) day of its receipt. A notice of deficiency shall include the:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals;
- iii. reasons why it is not an acceptable element of the Contract scope of work which the MWBE Program

Office has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by MWBEs; and

- iv. other information which the MWBE Program Office determines to be relevant to the MWBE Utilization Plan.

(e) The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the University a written remedy in response to the notice of deficiency.

- i. If the written remedy that is submitted is not timely or is found to be inadequate, the University-wide MWBE Program Office shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for partial or total waiver of MWBE participation goals on forms provided by the University-wide MWBE Program Office.
- ii. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(f) The University may disqualify a Contractor as being non-responsive under the following circumstances:

- i. If a Contractor fails to submit a MWBE Utilization Plan;
- ii. If a Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
- iii. If a Contractor fails to submit a request for waiver; or
- iv. If the MWBE Program Office determines that the Contractor has failed to document Good Faith Efforts.

(g) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

(h) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, SUNY shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

7. Waivers.

(a) For Waiver Requests Contractor should use (Form 7557-114) – Waiver Request.

(b) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete the University shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(c) If University, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the University may issue a notice of deficiency to the Contractor. The contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

8. Quarterly MWBE Contractor Compliance Report.

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form 7557-114) to the University by the 5th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

9. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.

(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.

(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.

For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University

is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of _____ percent (____%) for Certified Minority-Owned Business Enterprises and _____ percent (____%) for Certified Women-Owned Business Enterprises.

10. ENFORCEMENT. The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor

or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, remedies or enforcement proceedings as allowed by the Contract.

11. DAMAGES FOR NON COMPLIANCE.

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

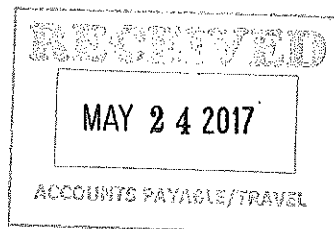
b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the University.



May 23, 2017

John Cordi
Business Office
Binghamton University
4400 Vestal Parkway
Binghamton, NY 13902-6000



RE: Service Agreements between Academic Partnerships and Binghamton University

Mr. Cordi,

Enclosed you will find the Service Agreements and Addendum A between Academic Partnerships and Binghamton University which have been signed by Academic Partnerships.

Once the representative for Binghamton University has had the opportunity to sign the documents, would you please send a copy of the fully executed Agreements and Addendum A to my attention. I have enclosed a return FedEx envelope for your convenience.

If you have any questions, please do not hesitate to contact me at 214-438-4104.

Sincerely,

Beth Morris
Executive Assistant to the CEO and CFO
Academic Partnerships

SERVICE AGREEMENT

This Service Agreement (**Agreement**) is entered into by and between Academic Partnerships, LLC, a Delaware limited liability company (**AP**), and Binghamton University (the **University**) as of May 1, 2017 (the **Effective Date**). AP and the University are sometimes referred to in this Agreement each as a **Party**, and collectively as the **Parties**.

Recitals Incorporated Into Agreement

- A. The University offers courses and degree programs at the undergraduate, graduate and post-graduate level as well as other courses and programs;
- B. AP provides services to universities to enable them to offer such courses, degree programs and other programs online;
- C. Subject to the terms and conditions set forth herein, the University desires to engage AP to provide such services with regard to the mutually agreed to courses, degree programs and other programs (as set forth in the attached Addendum[s]) (jointly called **Online Programs** and inclusive of all pre-requisite and co-requisite courses) (participants in Online Programs are **Students**).

I. AP Obligations

AP shall have the following obligations, which it shall fulfill through its own efforts as well as through efforts of its agents and affiliates:

- A. **Marketing, Recruiting, and Promotion.** AP shall market and promote the University and its Online Programs using a variety of means as determined by AP. A marketing plan will be presented to the University at least annually, and the University shall review and approve said plan[s]. AP will then operate under the approved marketing plan for the coming year. Quarterly, the Parties will update the marketing plan, as necessary, prior to implementation;
- B. **Program Development, Support and Implementation.** AP's implementation team will work with the University to launch the University's Online Programs. AP's implementation support services will include:
 - (1) an integration team that works with the University's personnel from key departments;
 - (2) facilitation of various operational planning sessions for Online Programs;
 - (3) development of a "Program Guidelines" document;
 - (4) cross-functional project management services, including development of a project plan to drive program implementation activities.
- C. **Academic Support Services.** AP will work with faculty and the University on Online Programs' design, including but not limited to:
 - (1) assistance with program-level planning, course mapping, and course conversion of Online Programs into an electronic format;
 - (2) assisting University in structuring multiple annual start dates; and
 - (3) introducing best practices for the delivery of Online Programs.
- D. **Enrollment Specialist Representatives (ESRs).** ESRs will serve as a primary point of contact for all prospective Students for the Online Programs. The ESRs will help educate Students about the Online Programs. AP's responsibilities include:
 - (1) staffing and equipping a call center for ESRs;
 - (2) providing a team of ESRs to contact potential Students;
 - (3) providing a toll free number and website for prospective Students;
 - (4) recruiting in compliance with the academic standards of the University and regulatory requirements; and

(5) informing potential Students of the Program characteristics and referring potential Students to the University regarding financial aid and/or academic questions. In performing recruiting activities, ESRs shall use such marketing and promotional materials as deemed appropriate by AP and as are provided by or approved by the University in accordance with this Agreement, and AP is entitled to rely on the accuracy of any such materials.

AP agrees that in the course of recruitment of Students for enrollment in one or more Online Programs it will not provide any commission, bonus or other incentive payments based directly or indirectly upon success in securing enrollments to any person or entity directly engaged in any Student recruiting or admission activities, except in accordance with the provisions of 34 C.F.R. 668.14(b)(22)(2003) and any subsequent amendment thereto, and/or any other requirement of the United States Department of Education or the University's regional accreditor.

E. Application Support. In addition to recruiting, ESRs will:

- (1) inform applicants of University application requirements;
- (2) contact applicants regarding upcoming Online Programs' deadlines;
- (3) remind applicants to submit necessary paperwork (transcripts, etc.);
- (4) remind Students of the registration process, registration deadlines and payment deadlines once admitted to the University; and
- (5) refer Students to appropriate University resources if there are further questions about the Program(s).

F. Student Support Services. ESRs will provide Student support and retention services, including, but not limited to the following:

- (1) following up with Students periodically through graduation;
- (2) referring Students to University resources if academic questions persist;
- (3) welcoming new Students and providing upcoming registration dates and/or deadlines;
- (4) re-engaging inactive Students; and
- (5) reminding Students of upcoming start dates, registration deadlines and payment deadlines.

G. Canvas. AP recommends Canvas as the preferred learning management system, but the University may use the learning management system of its choice. If the University elects to use Canvas, AP will fund the University's use of Canvas for the Online Programs for the duration of this Agreement. Specifically, AP will fund the Canvas usage fees, Premium Support (as defined by Canvas), and administrative and instructor training. Any additional services and customization the University wishes to receive must be negotiated directly with Instructure (the Canvas Provider). Additionally, if University chooses to use Canvas for other programs not covered by this Agreement, the University, as a partner of AP, will receive preferential pricing from Canvas. To receive Canvas from Instructure, the University must enter into a master subscription services agreement with Instructure as soon as reasonably practicable following the execution of this Agreement.

Upon entering into a master subscription services agreement with Instructure, the University shall take the necessary steps in conjunction with Instructure to integrate the University into the Canvas environment. The University shall use commercially reasonable efforts to complete such integration within sixty (60) days.

If the University desires to host a Massive Open Online Course (**MOOC**) on the Canvas Open Network, Instructure will provide support on the Canvas Open Network at no additional charge

to the University if the University enters into a memorandum of understanding with Instructure specifically for this purpose.

- H. Data Protection.** AP shall use commercially reasonable efforts to ensure the data shared is not re-disclosed or otherwise breached. For any data shared that is subject to the regulations of the Family Educational Rights and Privacy Act (FERPA), (34 CFR Part 99), AP shall comply with the requirements of FERPA.

II. University Obligations

The University shall maintain the sole authority in the (i) appointment of faculty, (ii) admission of Students, (iii) delivery of Online Programs, (iv) evaluation of Student performance, (v) decision to award course credit and/or academic credentialing, and (vi) decision to award scholarships or financial aid. During the Term of this Agreement, the University has the following obligations:

A. Marketing Deliverables.

- (1) University shall deliver to AP its branding and style guidelines to be used by AP in marketing and recruiting associated with the Online Programs and hereby grants the right to AP to use its intellectual property (including to represent the University in forming affiliate relationships and related promotions without necessarily referencing AP) referenced in Section IV and Exhibit C in performance of the AP Obligations
- (2) University shall allow AP and/or its agents or affiliates to use the University web domain for marketing (i.e., <http://online.universityname.edu> or <http://degree.universityname.edu>) and host those subdomains for ease of maintenance and updates;
- (4) University shall ensure that AP is its exclusive marketer and promoter with regard to the Online Programs.

B. Regulatory Approvals, Accreditations, and Licenses. The Parties agree that AP is relying on the University's obligation to determine and obtain all necessary regulatory approvals and licenses for the Online Programs including as set forth below:

- (1) **Obtaining Regulatory Approvals.** As it is required by law, the University shall fulfill its obligation to determine if it is required to obtain any type of approval, authorization, certificate, or license to deliver online instruction, market degree programs, or recruit Students. If the University determines that it or its agents are required to obtain any sort of approval, authorization, certificate, or license in a state, then the University shall obtain all such necessary approvals and shall communicate them to AP in a timely manner.
- (2) **Informing AP of Obtained Approvals.** The University shall inform AP as to which states' residents the University is legally authorized to enroll Students, what types of marketing and recruitment activities it has obtained approval for, and in which locations such approvals have been obtained.

C. Financial/Business Oversight. The University will oversee the financial management of the Online Programs.

D. Intellectual Property. The University will not remove, deface, or obscure any of AP's or its agents or affiliates' copyright or trademark notices and/or legends or other proprietary notices associated with AP or its agents or affiliates.

E. Access to Data. The University shall provide AP daily extracts from its Student Information System and Learning Management System that contain information about applicants and Students enrolled in the Online Programs. Essential data includes, but is not limited to, applicant, Student, section, course, enrollment, grade, and time-activity data. AP and its agents and/or affiliates may use the data in order for AP to fulfill its obligations and exercise its rights under this Agreement and to analyze and increase the effectiveness of the services it offers hereunder. Additionally, AP may share such data with its strategic partners, specifically

AspirEDU, Inc., Zoom Video Communications, Inc., and Instructional Connections, LLC, in order for AP to improve retention efforts and enhance AP's other services. All strategic partners receiving data from AP will be bound by same FERPA requirements as AP.

F. Competing Programs. The University agrees that for the duration of this Agreement it will not offer any similar and/or competing online program(s) to the Online Programs that are represented by AP.

G. Program Characteristics. The University will assure that:

- (1) its tuition and fees for the Online Programs is no more than the campus-based tuition and fees and are market-competitive, as defined by AP;
- (2) the Online Programs are in an accelerated format;
- (3) there shall be at least six program starts per year per Online Program;
- (4) the University shall work in good faith toward obtaining approval in as many jointly identified states with AP as soon as reasonably practicable;
- (5) the University shall work collaboratively with AP and establish parameters in conjunction with the annual marketing plan to offer promotions, including offering special scholarships and discounts to affiliate partners; and
- (6) the University shall provide and maintain at least three high-demand Online Programs under this Agreement, as defined by AP.

III. License Grants by AP

During the Term of this Agreement, AP grants the University a limited, nonexclusive license to use AP's intellectual property, including but not limited to its trademarks, logos, websites, marketing materials, and know-how, for the specific and limited purpose of marketing and promoting the Online Programs. **Exhibit A** lists the initial AP trademarks that AP expects to be used under this Agreement.

IV. License Grants by the University

A. License. During the Term of this Agreement, the University grants AP a limited, nonexclusive license to use the University's intellectual property, including but not limited to its trademarks, logos, websites, marketing materials, pictures (of faculty, the University, and its students and alumni), and know-how, for the specific and limited purpose of marketing and promoting the Online Programs. **Exhibit B** lists the initial University trademarks that the University expects to be used under this Agreement.

B. Agents and/or Affiliates. AP is hereby given the right to allow its agents and/or affiliates (e.g. specialized providers of niche services such as digital marketing and operational suppliers) to utilize the University materials where appropriate in AP's reasonable discretion to meet its obligations to the University and exercise its rights under this Agreement.

V. Ownership

A. Ownership of Contributed Materials. AP and the University each retain all ownership and intellectual property rights in the material they each contributed.

B. Ownership of Developed Materials. Any right, title and interest in and to any intellectual property arising from or attributed to any of the work or activities undertaken as part of this Agreement shall belong to the Party that creates such intellectual property, unless mutually agreed to otherwise in writing.

VI. Term and Right of First Offer

A. Term. The original term of this Agreement shall commence on the Effective Date and end on the fifth anniversary of the Launch Date of the seventh Online Program to have a Launch Date, unless terminated earlier hereunder ("**Launch Date**" is defined as the first date on which instruction begins for an Online Program). The original term and any successor term of this

Agreement automatically renews for two three (3) year periods unless either Party provides the other notice of non-renewal at least 12 months in advance of the expiration of the then current term (the **Notice Date**). If AP does not receive notice of non-renewal on or before the Notice Date, then AP shall send written notice to the University requesting that the University confirm in writing whether or not they wish for the Agreement to renew. The University then has 30 days from receipt of AP's request to respond, and if the University fails to respond to AP's request within the thirty (30) day period, the Agreement shall renew for an additional three (3) year term.

- B. Right of First Offer.** During the term of this Agreement, if the University decides to use a third-party service provider to provide services similar to those in this Agreement for online programs other than those listed in any executed Addendum, the University will first offer the right to exclusively negotiate an Addendum for the new Programs to AP. If AP and University negotiate in good faith but cannot reach an agreement within 60 days from the date of the first offer, University is free to contract with another service provider solely for online programs not listed in any executed Addendum.
- C. Early Termination.** This Agreement may be terminated at any time upon receipt of sixty (60) days prior written notice given by University for whatever reason.

VII. Payment and Taxes

- A. AP Payment.** The University will collect all **Revenue** (defined to mean all tuition and related fees charged to Students for the Online Programs) and will remit to AP an amount equal to the product of multiplying the applicable AP Revenue Percentage [identified in each Addendum] times Revenue (the **AP Payment**). The AP Payment is due and payable to AP within thirty (30) days of the start of any Online Programs. In the event no percentage is noted in an Addendum the default percentage shall be 50% of Revenue.
- B. Taxes.** Each Party will be responsible for any and all taxes due on their portion of Revenues received.
- C. Final Service Payment.** The University acknowledges that a significant portion of AP's cost is incurred before a Student enrolls, and that AP's only method of cost recovery is through the continuing payments as a Student progresses through the Online Programs. Therefore, in addition to the payments described in Section VII-A, upon expiration of this Agreement or termination for any reason other than an uncured material breach by AP, the University shall remit to AP the total AP Payment for the total number of courses remaining in each Student's Online Program of study as of 12AM on the day of termination, multiplied by 85% the (**Final Service Payment**). Though the amount of the Final Service Payment is calculated as of the day of termination, the University shall remit the Final Service Payment in four equal installments occurring every six months with the first installment due sixty (60) days after the day of termination.
- D. Early Termination Payment.** In addition to the Final Service Payment, if this Agreement is terminated for any reason other than an uncured material breach by AP, then, in addition to the Final Service Payment, as liquidated damages, the University shall remit to AP:
 - (1) If the Agreement is terminated between the Effective Date and the first anniversary of the Effective date: \$1,500,000.
 - (2) If the Agreement is terminated between the first anniversary of the Effective Date and the second anniversary of the Effective date: \$1,250,000.
 - (3) If the Agreement is terminated between the second anniversary of the Effective Date and the third anniversary of the Effective date: \$750,000.
 - (4) If the Agreement is terminated between the third anniversary of the Effective Date and the fourth anniversary of the Effective date: \$500,000.
 - (5) If the Agreement is terminated between the fourth anniversary of the Effective Date and the expiration of the Agreement: \$250,000.

(the **Liquidated Damages Payment**) (the Final Service Payment and Liquidated Damages Payment are collectively the **Early Termination Payment**).

Though the amount of the Early Termination Payment is calculated as of the day of termination, the University shall remit the Early Termination in four equal installments occurring every six months with the first installment due sixty (60) days after the day of termination.

VIII. Indemnification

- A. AP.** AP will defend and indemnify the University, to the extent permitted by applicable law, against any loss or damage caused by AP's actions hereunder provided that: (a) the University notifies AP in writing within 30 days of the claim; (b) AP has sole control of the defense and all related settlement negotiations; and (c) the University provides AP with the assistance, information, and authority reasonably necessary to perform the above; reasonable out-of-pocket expenses incurred by the University in providing such assistance will be reimbursed by AP.
- B. University.** Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, The State University of New York (SUNY) shall hold Academic Partnership, LLC harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of SUNY or of its officers or employees when acting within the course and scope of their employment

IX. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES EXCEPT AS OTHERWISE CONTEMPLATED IN THIS AGREEMENT.

X. Warranties

- A. Authority.** Each Party warrants, to the best of its knowledge, that it has the authority to enter into the Agreement and to perform its obligations set forth herein.
- B. Ownership of Materials Provided.** Each Party warrants to the other that it is the sole and exclusive owner of the provided materials or has the license to use and sub-license any intellectual property owned by third parties and incorporated into such materials, and that, to the best of its knowledge; such materials do not infringe any third-party rights.

XII. Additional Obligations Upon Termination.

In addition to any other obligations identified in this Agreement which extend beyond, or begin at, expiration or termination of this Agreement, both parties shall cease all use of the other's provided materials and return any such material in its possession to other Party.

XII. General

- A. Relationship Between the Parties.** Each Party is an independent contractor and will be solely responsible for payment of all compensation owed to its employees, as well as employment related taxes. Each Party will maintain appropriate worker's compensation for its employees as well as general liability insurance. Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture, agency or franchise relationship.
- B. Mutual Non-Disparagement.** The University and AP agree to make no statement, whether written or oral, about the other Party which could reasonably be expected to adversely affect the other Party's perception or reputation.

- C. Governing Law and Jurisdiction.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of New York.
- D. Dispute.** If one Party breaches this Agreement, the breaching-Party has 30 days to cure the breach after receipt of notice of the breach from the non-breaching-Party. If the cure does not occur within 30 days, then the Parties shall use best efforts to resolve the dispute, including holding at least one in-person meeting during the 30 days following the deadline for cure. If settlement is not reached within the 30 days, then the Parties shall have the full remedies available to them under applicable law.
- E. Notice.** All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by certified mail or actually received to:

If to AP:

Academic Partnerships, LLC
Attention: Finance Department
600 North Pearl Street
Suite 900
Dallas, Texas 75201

With copy to:

Academic Partnerships, LLC
Attn: Legal Dept.
2200 Ross Avenue
Suite 3800
Dallas, Texas 75201

If to the University:

Binghamton University
Attn: Director of Procurement
P.O. Box 6000
Binghamton, New York 13902-6000

- F. Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.
- G. Waiver.** The waiver by either Party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of either Party's intellectual property rights, no action, regardless of form, arising out of this Agreement may be brought by either Party more than two years after the cause of action has occurred.
- H. Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.
- I. Confidential Information.** Each Party agrees that it shall not use or disclose to any third party, except for the purpose of performing this Agreement, any business and technical information of the other Party which, in the exercise of reasonable judgment, should be recognized by such Party as confidential (**Confidential Information**). The obligation of confidentiality shall not apply to information which: (a) is or becomes part of the public domain through no fault of the

receiving Party; (b) is furnished by the disclosing Party to others without restrictions on use and disclosure; (c) becomes known or available to the receiving Party without restriction from a source other than the disclosing Party without breach of any Agreement with the disclosing Party; (d) is disclosed with prior written approval of the disclosing Party; (e) is independently developed by the receiving Party without the use of any Confidential Information; (f) is previously known to the receiving Party on a non-confidential basis; or (g) is required by court order (other legal process) or government agency to be disclosed, in which case, the receiving Party shall give the disclosing Party as much notice as is reasonably practical so that the disclosing Party may seek a protective order or other confidential protection as the disclosing Party, in its sole discretion, may elect and the receiving Party shall reasonably cooperate with the disclosing Party in disclosing Party's efforts to obtain such order or protection.

- J. Force Majeure.** Neither Party will be liable for delays or failure in its performance hereunder to the extent such delay or failure is caused by any act of God, war, natural disaster, strike, lockout, labor dispute, work stoppage, fire, third-Party criminal act or act of government, or any other event beyond the reasonable control of that Party (an **Excusable Delay**). This Agreement may be terminated with written notice by either Party under this section should the Excusable Delay of the non-performing Party continue for more than 30 days.
- K. Entire Agreement.** This Agreement with any documents referred to in it constitutes the entire agreement and understanding between the Parties and supersedes any previous agreement between them relating to the matters set forth herein.
- L. Successors and Assigns.** This Agreement will be binding upon, and will inure to the benefit of, the permitted successors and assigns of each Party hereto. AP may assign this agreement to an affiliated entity upon providing notice to University.
- M. Variation.** No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the Parties.
- N. Survivability.** The following Sections shall survive the expiration and termination of this Agreement: I-H, V, VII, VIII, IX, X, XII, XIII.

ACADEMIC PARTNERSHIPS, LLC

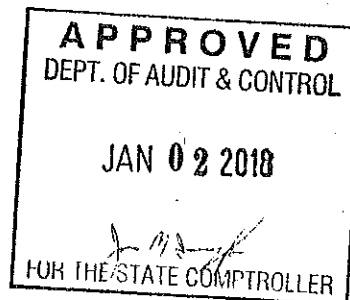
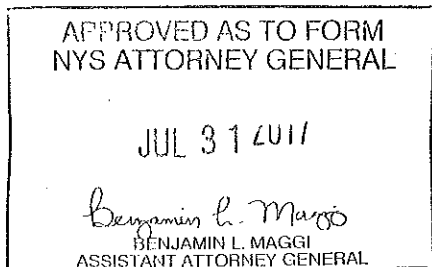
Signature: [Signature]
Name: Jeff Dawson
Title: Chief Financial Officer
Date: 5/23/17

BINGHAMTON UNIVERSITY

Signature: [Signature]
Name: _____
Title: _____
Date: 6/8/17

Michael F. McGoff, Ph.D.
Senior Vice Provost and
Chief Financial Officer
Binghamton University
Binghamton, NY 13902-6000

**APPROVED AS
TO FORM**



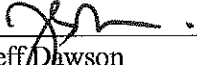
ADDENDUM A

This Addendum A (**Addendum**) dated as of May 1, 2017 is a supplement to that certain Service Agreement (**Agreement**) dated as of May 1, 2017 between Academic Partnerships, LLC (**AP**), and Binghamton University (the **University**) and is fully incorporated therein.

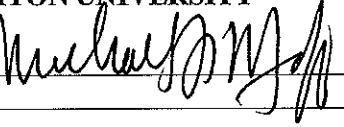
PROGRAM AND/OR DEGREE ("ONLINE PROGRAMS")	PROJECTED START DATE	AP REVENUE PERCENTAGE
RN to BSN	Fall 2018	50%
DNP	Fall 2018	50%
Ph.D.	Fall 2018	50%
MSN Family Nurse Practitioner (FNP)	Fall 2018	50%
RN to MSN Family Nurse Practitioner (FNP)	Fall 2018	50%
MSN Psych. / Mental Health Nursing	Fall 2018	50%
MSN Nurse Administrator	Fall 2018	50%
MSN Nurse Educator	Fall 2018	50%
RN to MSN Administrator	Fall 2018	50%
RN to MSN Educator	Fall 2018	50%
MSN Adult-Gerontological Nursing	Spring 2019	50%
RN to MSN Adult-Gerontological Nursing	Spring 2019	50%
BSN to DNP	Spring 2019	50%
BSN to Ph.D.	Spring 2019	50%

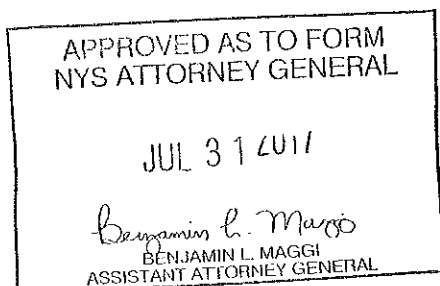
This addendum contains trade secrets and commercial and financial information that are confidential and therefore may not be disclosed to any third party. If the University receives an open records request for this information, it shall follow the applicable provisions of its state's open records law in regards to notifying AP of the request and seeking a ruling by its state's Attorney General or other open records authority regarding its confidentiality.

ACADEMIC PARTNERSHIPS, LLC

Signature: 
 Name: Jeff Dawson
 Title: Chief Financial Officer
 Date: 5/23/17

BINGHAMTON UNIVERSITY

Signature: 
 Name: _____
 Title: _____
 Date: 6/8/17



Michael F. McGoff, Ph.D.
 Senior Vice Provost and
 Chief Financial Officer
 Binghamton University
 Binghamton, NY 13902-6000

APPROVED AS TO FORM

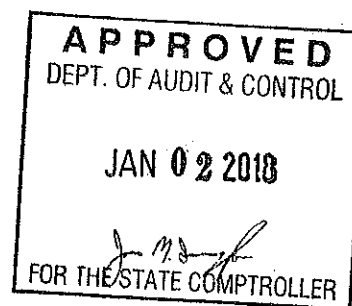


EXHIBIT A
(AP Trademarks, including those of its affiliates)

1. ACADEMIC PARTNERSHIPS, LLC
2. ACADEMIC PARTNERSHIPS
3. AP



EXHIBIT B

(University Trademarks)

1. _____

**AMENDMENT 1
TO THE
SERVICE AGREEMENT**

This Amendment 1 (**Amendment**), effective as of May 1, 2017, modifies the May 1, 2017 Service Agreement (**Agreement**) by and between Academic Partnerships, LLC, a Delaware limited liability company (**AP**), and Binghamton University (the **University**) and is fully incorporated therein. AP and the University are sometimes referred to in this Agreement each as a **Party**, and collectively as the **Parties**. Capitalized terms not defined in this Amendment have the meaning assigned to them in the Agreement.

The Parties agree as follows:

1. Modification to Article VIII-A: "Indemnification"

The following is hereby added to the end of Article VIII(A), "Indemnification:"

Notwithstanding the foregoing, the University reserves the right to join such action, at its sole expense, when it determines there is an issue involving a significant public interest.

2. Modification of Article VI.-A: Term

Article VI-A: Term is hereby deleted in its entirety and replaced with the following:

The original term of this Agreement shall commence on the Effective Date and end on the fifth anniversary of the Launch Date of the seventh Online Program to have a Launch Date, unless terminated earlier hereunder ("**Launch Date**" is defined as the first date on which instruction begins for an Online Program).

3. Modification of Hierarchy of Precedent

"Section 3. Hierarchy of Precedent" of the Binghamton University AGREEMENT numbered C100037, is hereby modified by re-ordering the current item "g" as item "h" and the current item "h" as item "g."

4. Removal of Early Termination

"Article VI-C: Early Termination" is hereby deleted in its entirety and replaced with the following.

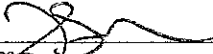
C. Early Termination. The Parties may mutually agree to terminate this Agreement at any time.

5. Removal of Early Termination Payment

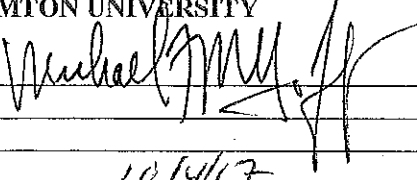
"Article VII-D: Early Termination Payment" is hereby deleted in its entirety.

[Remainder of this page intentionally left blank. Signature page to follow.]

ACADEMIC PARTNERSHIPS, LLC

Signature: 
Name: Jeff Dawson
Title: Chief Financial Officer
Date: 9/29/17

BINGHAMTON UNIVERSITY

Signature: 
Name: _____
Title: _____
Date: 10/4/17

Michael F. McGoff, Ph.D.
Senior Vice Provost and
Chief Financial Officer
Binghamton University
Binghamton, NY 13902-6000

**APPROVED AS
TO FORM**

Bms

GR

**AMENDMENT 1
TO THE
SERVICE AGREEMENT**

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The Parties agree as follows:

1. Modification to Article VIII(A), "Indemnification"

The following is hereby added to the end of Article VIII(A), "Indemnification:"

Notwithstanding the foregoing, the University reserves the right to join such action, at its sole expense, when it determines there is an issue involving a significant public interest.

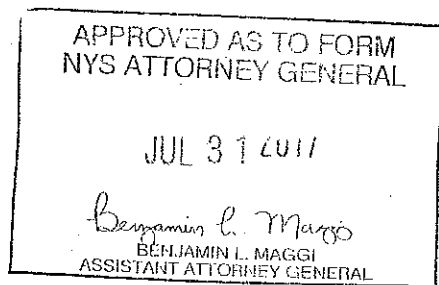
ACADEMIC PARTNERSHIPS, LLC

Signature: [Signature]
Name: Jeff Dawson
Title: Chief Financial Officer
Date: 6/29/17

BINGHAMTON UNIVERSITY

Signature: [Signature]
Name: John J. Cordi
Title: Associate V.P. for Business Affairs
Date: 7/21/17

**APPROVED AS
TO FORM**
[Signature]



Binghamton University

(ACKNOWLEDGEMENT BY INDIVIDUAL)

STATE OF _____)
COUNTY OF _____) SS.:

On this _____ day of _____, _____, before me personally came _____, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

Notary Public

(ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION)

STATE OF _____)
COUNTY OF _____) SS.:

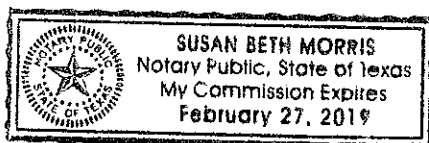
On this _____ day of _____, _____, before me personally came _____, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of _____ and that he/she executed the foregoing instrument in the firm name of _____, and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of _____, for the uses and purposes mentioned therein.

Notary Public

(ACKNOWLEDGEMENT BY CORPORATION)

STATE OF: Texas)
COUNTY OF: Dallas) SS.:

On this 29th day of June, 2017, before me personally came Jeff Dawson, to me known, who being duly sworn, did depose and say that he/she resides in Dallas, Tx. That he/she is the Chief Financial Officer of the Academic Partnerships, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed said instrument is such corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.



[Signature]
Notary Public