

Appendix E – Memorandum of Understanding Template

This memorandum of understanding (MOU) template is an example of the type of agreement that should be in place between an institution and employer partner to ensure clarity of expectations, deliverables, roles and responsibilities and finances. It illustrates the type of subjects to be addressed in an MOU and the level of formality needed to minimize risk potential for both parties.

DISCLAIMER: We hope that this MOU template facilitates discussions that lead to the basic terms of each new partnership. It is offered to you for informational purposes only and without representation or warranty of any kind. The MOU template does not provide legal, business or tax advice, and it cannot be used to substitute the need for your legal counsel to draft a MOU that is appropriate for each partnership and state’s laws.

[Date]

Parties

(1) (1) [Company name and address] (“[Name of Company]”);

(2) [School name and address] (the “Academic Institution”)

(3) [Name of Company] and Academic Institution shall hereinafter be referred to individually as a “Party” and jointly as (the “Parties”)

Recitals

(A) (A) [Name of Company] helps colleges/schools/universities prepare learners for [.....]

(B) [Name of Company] offers services including [.....] (the “Program”)

(C) This Memorandum of Understanding (“MOU”) defines the terms of the Parties’ agreement for [a pilot project (the “[Project Name]”) to offer the Program]. Each Party will make available the appropriate resources required to meet the deadlines and obligations defined in this MOU..

1. Term

1.1 The initial term of the Project shall be for [.....] year(s), commencing as of [the effective date], subject to provisions below.

1.2 If the Program is successful (based on a joint review by [Name of Company] and the Academic Institution after completion of the [.....] year, the Project shall automatically renew for successive periods of [.....] year(s) each unless either Party provides written notice of non-renewal to the other Party at least [.....] day(s) prior to the end of any Term. The initial term and any successive term referred to as the “Term.”

2. Time Frame

2.1. The Parties anticipate a sales and marketing launch of the Program in [month/year], with the first cohort to start in [month year]. [.....] shall be responsible for all sales and marketing efforts.

3. Structure of the Program

3.1 The Program will be based on [Name of Company] [describe what Company will be providing], as mutually agreed to by the Parties in writing. It shall consist of [.....] which is to be supplied by [Name of Company]. Additional details of the Program shall be mutually agreed upon by the Parties, in writing, in the design phase.

3.2 If the Program is successful, the Parties anticipate marketing other [Name of Company] programs, however, such program(s) and the timing to offer such additional programs, will be based on a separate written MOU signed by both Parties. [Name of Company] proposes the following potential additional programs:

- a. [.....];
- b. [.....]

4. [Name of Company] Obligations

4.1 [Name of Company] will be responsible for

4.2 [Name of Company] will provide

4.3 [Name of Company] will [.....] as set forth below

- a. [.....];
- b. [.....];
- c. [.....]

4.4 [Name of Company] shall provide [.....] [insert intellectual property to be provided]. [Name of Company] shall retain all right, title and interest in and to all [.....] "Intellectual Property Rights" means all patents and industrial property rights, patent applications and registrations, trademarks, trademark applications and registrations, copyrights and moral rights, copyright applications and registrations, renewals, extensions, continuations, divisions and reissues of, and applications for any of the rights referred to herein, Trade Secrets, trade names and industrial designs, domestic or foreign, whether arising by statute or common law. "Trade Secrets" as used herein means information that is used or may be used in business or for any commercial advantage, derives independent economic value, actual or potential, from not being generally known to the public or to the other persons who can obtain economic value from its disclosure or use, is the subject of reasonable efforts to prevent it from becoming generally known, and the disclosure of which would result in harm or improper benefit.

4.5 Academic Institution shall have the right to review [.....] and accept or reasonably reject it in whole or in part for use in the [.....] Program, provided that the Academic Institution will provide detailed feedback with respect to any material that is rejected and the reasons for such rejection. For those portions that the Academic Institution rejects, [Name of Company] shall resubmit, for review and approval by the Academic Institution, new material to cover the material rejected.

4.6 [Name of Company] represents and warrants that, during the term of this Project, the software and services used for processing credit card transactions shall be compliant with standards established by the payment card industry (PCI) Security Standards Council (<https://www.pcisecuritystandards.org/index.shtml>). [Name of Company] agrees to defend and indemnify and hold the Academic Institution, its officers, employees, and agents, harmless for, from and against any

and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses arising out of or relating to any loss of the Academic Institution's customer credit card or identity information managed, retained or maintained by [Name of Company], including but not limited to fraudulent or unapproved use of such credit card or identity information, resulting from [Name of Company] failure to comply with this section 4.6

4.7 [Name of Company] will not, during the Term of this MOU, engage in a similar partnership with another institution of higher education within a [.....]-mile radius of the Academic Institution in the state(s) of [Name of State(s)]. During the term of this MOU, The Academic Institution will have continued ability to market the Program to students with no geographical restriction.

4.8 Under no circumstances shall [Name of Company] or any individual it engages to perform services on its behalf be considered an employee of the Academic Institution.

4.9 [Name of Company] shall ensure that any individuals providing services under this MOU shall have satisfied a criminal background check by a criminal background check vendor that includes a check of the vendor's proprietary national criminal background check database.

4.10 [Name of Company] agrees that if in the course of providing services pursuant to this MOU, [Name of Company] (or its agents or employees) observes an incident or threat of child abuse or neglect, or learns of an incident or threat of child abuse or neglect, and [Name of Company] (or its agent or employee) has reasonable cause to believe that child abuse or neglect has occurred or will occur, [Name of Company] must make a report of that abuse or neglect to law enforcement or to a county social service agency as provided in the Academic Institution's Child Abuse and Neglect Policy (if any) and consistent with any applicable law. If the suspected child abuse or neglect involves the Academic Institution, [Name of Company] shall also report that abuse to the Academic Institution's legal counsel.

4.11 All student education records (collectively, "Student Records") created, accessed, or held by [Name of Company] under this MOU shall, to the extent applicable, be maintained and utilized by [Name of Company] in accordance with the requirements of the Family Educational Rights and Privacy Act, 20 USC§ 1232g, and its implementing regulations, 34 CFR pt. 99, as each may be amended from time to time (collectively "FERPA"). Specifically, the Academic Institution acknowledges that [Name of Company] is a "school official" with a legitimate education interest in the Student Records as set forth in 34 C.F.R. § 99.31 (a)(i)(B). [Name of Company] agrees that (i) it is subject to the requirements of 34 CFR § 99.33(a) governing the use and re-disclosure of Student Records; and (ii) it shall not maintain, use, disclose, or allow access to Student Records except for legitimate educational purposes as permitted by this MOU or as otherwise authorized by the Academic Institution. Provided, however, [Name of Company] may disclose Student Records to the extent necessary to comply with a warrant, subpoena, court order, or other legal obligation. [Name of Company] shall, to the extent practicable, notify the Academic Institution in advance of such compliance with a legal obligation unless ordered not to notify the Academic Institution by applicable legal authorities. Further, [Name of Company] agrees that, to the extent it re-discloses any Student Records to a subcontractor or other third party, it shall require such subcontractor or third party to comply with [Name of Company]'s obligations under this section. For the avoidance of doubt, the Academic Institution agrees that [Name of Company] may use contact information received through its provision of services (including name, email address, physical address, and phone number) to notify students and prospective students of other [Name of Company] offerings; provided, however, that such students shall have the opportunity to opt-out of such notifications and [Name of Company] will honor any request to opt-out.

4.12 [Name of Company] shall ensure that access to Student Records is limited to individuals (including [Name of Company] employees and vendors and subcontractors) who have a legitimate educational purpose for such access. To the extent remote access of Student Records is necessary by a third party for technical support, such access shall be limited to authenticated and authorized access via secure protocols. Authorization and multi-factor authentication shall be required for access to all Student Records, and Student Records shall be encrypted when in transit and at rest. A network firewall shall be engaged on all [Name of Company] networks in which Student Records are stored, and network access to a system or server hosting such data must be limited to the minimum necessary. [Name of Company]

systems on which Student Records are maintained shall be locked or logged out when unattended (including an inactivity auto-lock), and all physical Student Records shall be maintained in a secured location. [Name of Company] shall not permit Student Records to be accessed through mobile devices. [Name of Company] shall not store Student Records with a third party without first obtaining the Academic Institution's approval. [Name of Company] shall regularly backup Student Records and store any backups in an encrypted and secure location. [Name of Company] shall permit the Academic Institution to monitor compliance with the provisions contained herein. [Name of Company] shall provide Academic Institution with copies of any Student Records it may request, and upon termination of this MOU, [Name of Company] shall turn over all Student Records in its possession to the Academic Institution in a form acceptable to the Academic Institution.

4.13 [Name of Company] shall indemnify, defend and hold harmless the Academic Institution, its officers, employees and agents from and against any and all claims, demands, losses, liability, costs, damages or expenses (including financial or consequential damages) of every kind and description or damage to persons or property occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work in connection with this MOU, but only to the extent that such claims are caused by or result from the negligence, or willful misconduct of [Name of Company], its employees, subcontractors, or representatives.

[Name of Company] shall provide the Academic Institution proof of the following types and minimum limits of insurance coverage. [Name of Company] shall also name the Academic Institution as an additional insured on its commercial general and excess/umbrella liability policies.

Commercial General Liability

- Each Occurrence \$1,000,000
- General Aggregate \$2,000,000

Professional Liability (Educator's Legal)

- Per Occurrence Limit \$1,000,000
- Aggregate \$2,000,000

Excess/Umbrella Liability

- Each Occurrence \$1,000,000
- Aggregate \$2,000,000

Crime Coverage (covering Crime, and including employee theft, forgery, larceny and embezzlement)

- Limit per Loss \$500,000

Cybersecurity and Data Loss Liability

- Each Occurrence \$1,000,000
- General Aggregate \$2,000,000

[Name of Company] shall give sixty (60) day advance written notice of non-renewal, cancellation, or expiration during the term of this MOU. In the event of non-renewal, cancellation, or expiration, [Name of Company] shall provide the Academic Institution with evidence of the new source(s) of required insurance within twenty-one (21) calendar days after the Academic Institutions' receipt of the sixty (60) day notice. Failure to maintain the required insurance in force may result in the termination of this MOU at the discretion of the Academic Institution.

The hold harmless, indemnity and insurance provisions of this MOU shall survive the termination of this MOU and shall remain operative until the time that all potential claims or potential civil actions by the Parties or by third parties shall expire under existing law.

If any policies are written on a claims-made basis, [Name of Company] shall not discontinue or change liability insurance policies in effect during any part of this MOU without buying an extended reporting period to cover potential claims that may have occurred during the term of this MOU.

Upon execution of this MOU, [Name of Company] shall furnish the Academic Institution with a certificate of insurance and declaration page, showing evidence of the above requirements. Certificate and declaration page must be submitted and approved by the Academic Institution Office of Risk Management (or equivalent office) before any work under this MOU may begin.

[Name of Company] shall notify the Academic Institution promptly upon the commencement of any litigation against [Name of Company] where there is any reasonable possibility that the Academic Institution may be made a party thereto.

4.14 [Name of Company] shall permit the Academic Institution to monitor compliance with the provisions contained herein by (i) providing reports regarding its operations that the Academic Institution may reasonably request, and (ii) allowing access to its records by an independent auditor selected by the Academic Institution.

5. Academic Institution Obligations

5.1 Any Licensing required to offer the Program shall be provided under Academic Institution's license as an educational institution in the state of [state name]. Any certificate issued to students completing the Program will be issued under the Academic Institution's umbrella and shall not contain a reference to [Name of Company] or [Name of Company's] logo.

5.2 The Academic Institution will market the Program according to its standard marketing practices for similar programs and on its website. In connection therewith the Academic Institution shall make its brand available (according to the conditions stated above including prior written approval, not to be unreasonably withheld, conditioned or delayed) to [Name of Company] for marketing of the Program. In addition, a specific list of marketing support activities will be agreed between the Parties (i.e listing the Program on the Academic Institution's Facebook page, etc) and the Academic Institution will make best efforts to include [at least one email] with the offering to all Academic Institution's alumni, with the goal of a [quarterly email] to Academic Institution alumni if possible.

5.3 Academic Institution will make best efforts to ensure that leads for the Program that are received by the Academic Institution directly from the Academic Institution's website are sent to [Name of Company] for follow-up and/or processing so that all enrollments can be managed by [Name of Company] regardless of origin.

5.4 During the term (including any extensions) and for one year after the termination for any reason, the Academic Institution will not offer any company with similar content in competition with the Program in [name of state(s)] or online except as offered with and through [Name of Company]. The academic Institution will continue to offer courses and programs that are already a part of their regular portfolio and may focus on content that precedes or follows-on to the content in the Program.

6. Joint Obligations

6.1 The Parties will agree on the plan and supervised execution of public notification concerning this MOU any other activities of the Parties involving both organizations, the timing, content, delivery and media to be used for any and all publicity about the Parties' relationship or about the Program or any other activities involving both Parties and is subject to prior written approval by both Parties. Both Parties retain the absolute right to determine whether permission will be granted to use that party's name or brand or when and how to publicize the relationship between the Parties.

6.2 Subject to the success of the Program and the structure for the Program set forth herein, the Parties acknowledge that there is no inherent restriction on the number of cohorts per year

6.3 [Name of Company] may choose to offer financial support in the form of special discounts or scholarships to interested, selected students upon written approval from the Academic Institution. The Academic Institution shall not offer any loans or other financial support without the prior written approval of [Name of Company].

6.4 The Parties agree that the optimal price point for the Program will be determined by mutual agreement between the Parties. Any amendment to the optimal price point must be agreed in writing (which may include email).

7. Revenue Share

7.1 [Name of Company] shall collect all revenue related to the Program. The Parties shall share equally the Net Profit (to be defined as revenue received less costs included in the budget, including but not limited to those for the instructors, student services, career services and sales/marketing).

7.2 Revenue included in the revenue sharing pool will be the tuition received for the Program attributable to enrollments.

8. Payment Terms

8.1 [Name of Company] will generate a quarterly revenue report as of the end of each calendar quarter that will show quarterly enrollments by cohort and revenue received. That report will be received by the Academic Institution no later than forty-five (45) days after the end of the calendar quarter. Payment of the amount due in full will be received by the Academic Institution no later than thirty (30) days of the date the Parties agree on the calculation and the amount to be paid to the Academic Institution.

9. Confidentiality

9.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by Clause 9.2

9.2 Each Party may disclose the other Party's confidential information:

- a. To its employees, officers, representatives or advisors who need to know such information for the purposes of carrying out the Party's obligations under the MOU. Each Party shall ensure that its employees, officers, representatives or advisors to whom it discloses the other Party's confidential information comply with this clause 9; and
- b. As may be required by law, court order or any government or regulatory authority of the [state name] open record Act (if the Academic Institution is a public institution).

9.3 No Party shall use any other Party's confidential information for any purpose other than to perform its obligations under this MOU

10 Governing Law and Jurisdiction

11.1 Both Parties agree to attempt to settle disputes through non-binding mediation. The laws of the United States and the state in which the Academic Institution is incorporated will govern.

In witness whereof, the Parties have executed this MOU as of the date first written above.

[Name of Company]

[.....] [Name, title], duly authorized for and on behalf of [Name of Company]
[behalf of Name of Company]

[The Board of Regents by and on the Behalf of (or Board of Trustees)]

[.....][Name, title], duly authorized for and on the behalf of [the Academic Institution's name]