

## STATEMENT OF WORK NO.1

This Statement of Work No. 1 ("Statement of Work" or "SOW") dated as of upon approval, ("SOW Effective Date"), is by and between Kaplan Global Solutions, LLC d/b/a Colloquy ("Licensor") and Texas Southern University, a Texas not for profit corporation ("Licensee") and is issued under and is subject to the terms and conditions (except for Statements of Work issued thereunder other than this SOW) set forth in the Master Services and License Agreement, dated (upon approval), between Licensor and Licensee ("MSA"), which terms and conditions (except for Statements of Works issued thereunder other than this SOW) are incorporated herein by reference. All capitalized terms not defined herein shall have the meaning set forth in the MSA.

### 1. Term and Termination.

1.1. Term. This SOW shall commence as of the SOW Effective Date and shall and shall end on September 30, 2016 ("Initial SOW Term") unless sooner terminated under the termination provisions of the MSA or this SOW. Upon expiration of the SOW Initial Term, this SOW shall automatically renew for one (1) successive SOW terms of 1 year each (each a "Renewal Term", and with the SOW Initial Term, the "SOW Term"), unless either Party gives the other Party written notice at least thirty (30) days prior to the applicable expiration date of the Initial SOW Term of then Renewal SOW Term of its intention not to renew.

1.2. Termination. Notwithstanding the foregoing, either Party may terminate this SOW in accordance with the termination provisions of the MSA.

### 2. Background; Scope; Assumptions

#### 2.1. Background.

Licensee desires to have an online LLM degree program, Licensee will provide the LMS Services and related support services. Specifically, Licensee will provide access to online technology platforms, both synchronous (Indigo) and asynchronous (LMS) (which are collectively part of the LMS Services), training and technical support for stated platforms, and consulting and account management services as needed for the successful launch and delivery of online courses by Licensee.

#### 2.2. Assumptions.

Licensee shall obtain necessary American Bar Association Acquiescence and any regional accreditations necessary for the degree program to be used on the platform enabling the LMS Services.

### 3. Services.

3.1. LMS Services. Licensor grants to Licensee a worldwide, non-exclusive, non-sub licensable license to use the LMS Services for the duration of the SOW Term.

#### 3.2. Content Services.

### **Indigo Platform- Live Classroom and Asynchronous LMS**

- Programming & Development
  - Institution branded Indigo Live and Indigo Portal (LMS)
  - Ongoing platform upgrades, enhancements, feature additions
- Managed Services
  - Technical Support- Students, faculty, and staff; synchronous and asynchronous platforms; 7AM-9PM PST, Monday-Saturday; telephone, email, chat
  - Server Hosting
  - Baseline technical support- maximum 15 courses annually \$50,000
    - 16-25 courses \$65,000 annually
    - 26-35 courses \$80,000 annually
    - 36-45 courses \$95,000 annually
  - “10/10” Live Classroom support \$100/live class
    - Guideline- 6-10 live classes per course each term
- Faculty Training & Support \$48,000 annually
  - Introductory platform and online course creation training for all faculty and staff
  - Ongoing faculty and staff support and training
    - Monthly phone/video meetings with staff and administrators
    - Faculty and staff access to KLE Online Faculty Training Course and all supporting materials and documentation
    - Course revision collaboration as needed
- Content Creation \$3000/course
  - Content and data entry per course for initial term offerings
  - Optional collaboration on future term course creation
- Institution specific, one-off Indigo customization requests \$300/hour

### **Account Management Services**

\$30,000/annually

- Annual on-campus meeting with KLE Online Learning Team
- KLE Executive Director provide ongoing account management service
- Point of contact for KLE provided services, pre- and post- program launch.

### **Additional Travel & Consultation**

Actual Travel expenses (airfare, lodging, meals coordinated by Kaplan) + day rate dependent upon institution need or request

- Instructional design consultation
- KLE Marketing consultation
- On-site support visits as requested

3.3. Schedule. Licensor will provide the KAPx Services and Content Services, if any, as set forth below and in accordance with a project plan to be mutually agreed upon by the Parties .

Task	Finish Date
Launch Meeting- gather branding and all necessary information to begin LMS & Indigo customizations; communicate faculty training schedule; communicate course development deadlines.	Within 30 days of contract execution; no sooner than 6 months prior to initial term launch
LMS & Indigo customizations, server setup	Within 30 days of Launch Meeting
Faculty Training	Within 90 days of Initial Term Start
Course Development	Upon timely submission of content, courses will be built and ready for faculty review 30 days prior to Initial Term Start
Course Revisions	As deemed necessary; upon timely submission of revisions, complete and ready for faculty review 30 days prior to term start.

#### 4. Fees.

Licensee shall pay for the LMS Services and other services in accordance with the schedule set forth below:

According to cost schedule below, fixed expense in year 1 is \$174,800. Additional variable expense is dependent on number of courses created, number of live classes supported, and any additional customization or consultation requests billed at rates indicated.

##### Indigo Platform- Live Classroom and Asynchronous LMS

- Programming & Development \$28,800 annually
- Managed Services
  - Baseline technical support- maximum 15 courses annually \$50,000
    - 16-25 courses \$65,000 annually
    - 26-35 courses \$80,000 annually
    - 36-45 courses \$95,000 annually
  - "10/10" Live Classroom support \$100/live class
- Faculty Training & Support \$48,000 annually
- Content Creation \$3000/course
- Institution specific, one-off Indigo customization requests \$300/hour

##### Account Management Services

\$30,000/annually

**5. Expenses.**


Actual Travel expenses (airfare, lodging, meals coordinated by Licensor) + day rate dependent upon Licensee need or request.

**6. Special Terms and Conditions.**

The following special terms and conditions will apply to this SOW:

IN WITNESS WHEREOF, the Parties have caused this SOW to be made and executed by duly authorized officers as of the SOW Effective Date.

**KAPLAN GLOBAL SOLUTIONS, LLC**  
**d/b/a Colloquy**

By:   
Name: Amjed M. Saffarini  
Title: President

**Texas Southern University**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## MASTER SOFTWARE AND SERVICES LICENSE AGREEMENT

This Master Software and Services License Agreement (the "Agreement"), by and between Kaplan Global Solutions, LLC, a Delaware limited liability company, d/b/a Colloquy, with offices located at 6301 Kaplan University Avenue, Fort Lauderdale, Florida 33309 (collectively, "Licensor") and Texas Southern University, a Texas not for profit corporation, with offices located at 3100 Cleburne, Houston, Texas 77004 ("Licensee"), is effective as of upon approval ("Effective Date"). Licensor and Licensee are sometimes referred to individually as a "Party" or together as the "Parties."

**WHEREAS**, Licensor has developed learning management software, as well as a proprietary synchronous platform that will be made available to end users ("End Users") online via the Internet;

**WHEREAS**, Licensee desires to obtain from Licensor, and Licensor desires to provide Licensee a license to use the LMS software and services ("LMS Services") as set forth in this Master Agreement and as may be agreed upon by the Parties in Statement(s) of Work ("SOW") issued under this Master Agreement on the terms and conditions set forth herein below;

**WHEREAS**, Licensor desires to obtain from Licensee, and Licensee desires to provide Licensor a license to use any content, including, without limitation, information, data, works of authorship or other materials delivered in text, photographic, audio, visual or audiovisual format, Licensee and/or its End Users post on, store on, broadcast or transmit through the LMS Services (the "Content").

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual promises, covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### 1. License Grant

1.1 Subject to the terms and conditions of this Agreement, Licensor grants to Licensee a worldwide, non-exclusive, non-sublicensable license to use the LMS Services for the duration of the Term.

1.2 Subject to the terms and conditions of this Agreement, Licensee hereby grants to Licensor, its assigns, agents, and licensees, a limited, world-wide, royalty-free, non-exclusive license during the Term to use, distribute, redistribute, syndicate, reproduce, publish, reprint, modify, adapt and create derivative works of the Content, in whole or in part, in original form or as edited or adapted by Licensor, in any media and formats whether now known or later developed, in each case solely to the extent necessary for Licensor to perform its obligations under this Agreement.

1.3 Licensee expressly acknowledges and agrees that Licensor's ability to provide the LMS Services to Licensee is subject to the agreement between Licensor and a third party data center and hosting service provider (the "Hosting Agreement").

1.4 Licensee shall not remove any notices or legends from the LMS Services.

1.5 The Parties acknowledge and agree that this Agreement establishes a contractual framework, and terms and conditions, which will serve as the basis for Licensee to use the LMS Services. Licensor shall only perform services for, or deliver products to, Licensee pursuant to SOWs issued under this Agreement, which incorporate by reference the terms and conditions of this Agreement. Any agreement between the Parties that is not a SOW issued under this Agreement, incorporating by reference the terms and conditions of this Agreement, shall be deemed to be null and void with respect to Licensor. Prior to any lecture to be distributed through the LMS Services, the Parties will mutually agree on and execute a SOW.

## 2. Reverse Engineering

Except as and only to the extent expressly permitted by applicable law, Licensee shall not copy, decompile, reverse engineer, disassemble, modify, or create derivative works of the LMS Services or any part thereof.

## 3. Payments

3.1 Licensee shall pay Licensor per the terms set forth in the SOW and in accordance with Chapter 2251, Texas Government Code. Accordingly, payments for any invoice shall be due no later than 30 days after the latter of receipt of the LMS Services (which shall be deemed delivered on an ongoing basis during each day of the Agreement) or receipt of a completed invoice from Licensor.

3.2 Licensee's payment obligations hereunder are exclusive of taxes. Licensee agrees to pay, indemnify and hold Licensor harmless for all taxes including sales, use, excise, import or export, value-added or similar tax or duty, however designated, and imposed as a result of the licensing and/or use of the LMS Services. Further, Licensee is solely responsible for any insurance verification fees. Notwithstanding any of the foregoing in this Section 3.2, Licensee shall not be obligated to pay any taxes for which it can demonstrate a valid exemption.

3.3 In the event that Licensee requests Licensor to further customize the LMS Services, the parties shall negotiate in good faith a separate agreement concerning such further customizations.

3.4 To the extent that any SOW specifies the reimbursement of Licensor for travel expenses, Licensor shall invoice all requests for reimbursement in accordance with the State of Texas travel, meal and lodging reimbursement guidelines applicable to State of Texas employees.

3.5 Licensor understands that Licensee is a governmental entity, and should the Texas Legislature fail to provide funding for any period during the term of this Agreement, Licensee shall be excused for all liability for payment; provided, however, that Licensee shall provide written notice to Licensor within thirty (30) days after learning of such non-funding, and this Agreement shall automatically terminate upon such notice and Licensee shall be liable to Licensor for any amounts due prior to the date of such termination.

## 4. Non-Exclusivity

Nothing in this Agreement limits Licensor's right to host, distribute or otherwise make available content obtained by third parties, whether in connection with the LMS Services or otherwise.

5. **Licensee Obligations**

5.1 If the Licensee becomes aware that any End User's use or Content violates the End User Agreement/Privacy Policy, which is attached as Schedule A, or violates any of the terms of Host's Acceptable Use Policy, Licensee will immediately remove the content or suspend access to an End User (as may be applicable). If Licensee fails to immediately remove the applicable content or suspend the End User access, then Licensors may suspend access to the applicable End User.

5.2 Licensee expressly acknowledges and agrees that Licensors shall not assume or have any liability for any action or inaction with respect to any Content posted by Licensee and/or End Users of the LMS Services.

5.3 Licensee and/or End Users of LMS Services remain solely liable for any and all Content posted by Licensee and/or End Users.

5.4 Licensee expressly warrants and represents that it shall secure all rights and permissions with respect to any third-party rights to Content, including, without limitation, permissions necessary for the broadcast or rebroadcast of streaming video content it elects to post on the LMS Services. Licensee further warrants and represents that its Content, including, without limitation, the distribution of streaming video content does not infringe or violate any personal or property rights or interest of others, of any kind or nature whatsoever (including, without limitation, any copyright, moral right or right of droit morale, publicity rights), of any person or entity. To the extent allowed by the Constitution and laws of the state of Texas, Licensee agrees to indemnify, protect, defend, save and hold harmless Licensors from and against any and all losses, damages, harms, costs, expenses, liabilities, and obligations based upon claims that the Content, including, without limitation, the distribution of streaming video content infringes, violates or misappropriates intellectual property rights of a third party.

5.5 Licensors has the right, but not the obligation, to monitor any and all postings to public areas of the LMS Services to determine compliance with this Agreement and the Hosting Agreement. Licensors has the right, but not the obligation, to remove any and all postings, including, without limitation, in its sole discretion, finds to be in violation of this Agreement and/or the Hosting Agreement or otherwise objectionable.

5.6 Licensee shall: (i) be responsible for compliance with this Agreement by its End Users and other personnel; (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the LMS Services, End User passwords and End User accounts, and notify Licensors promptly of any such unauthorized access or use; (iii) use the LMS Services only in accordance with applicable laws and government regulations (including without limitation, anti-spam email laws). Licensors shall not use the LMS Services to: (a) store or transmit infringing, libelous, obscene, threatening, or otherwise unlawful or tortious material, including without limitation material harmful to children or violating third party intellectual property or privacy rights; (b) solicit, receive or submit to the LMS Services any content in violation of any third party rights; (c) store or transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; or (d) interfere with or disrupt the integrity or performance of the LMS Services.

6. **Compliance**

6.1 In performing their respective obligations under this Agreement, Licensor and Licensee agree to comply in all material respects with applicable laws, rules and regulations, whether federal, state or local as may apply to Licensor or Licensee respectively.

6.2 Licensee will protect the privacy and legal rights of its End Users under all applicable laws and regulations, which includes posting the End User Agreement/Privacy Policy, which is attached as Schedule A.

6.3 Licensee will provide Licensor with any and all contact information for each End User who has not opted-out from being contacted by either party. Either party reserves the right to contact an End User by any method it chooses, including, without limitation, email, mail, phone, SMS messaging, etc.), provided that such contact is in compliance with all applicable laws and the End User Agreement/Privacy Policy, which is attached as Schedule A.

6.4 In addition to its other rights under this Agreement, Licensor may suspend or terminate Licensee's or its End Users access to the LMS Services in the event of any violation of Section 5.6, or in order to: (a) prevent damage to or degradation of, the LMS Services caused by Licensee or its End Users; (b) comply with any law, regulation, court order, or other governmental request or order which requires immediate action; or (c) otherwise protect Licensor from potential liability. If suspended, Licensor will promptly restore use of the LMS Services to Licensee as soon as the event giving rise to the suspension has been resolved to Licensor's satisfaction

## 7. Term and Termination

### 7.1 Term

This Agreement will commence on the Effective Date and will continue in effect until terminated as set forth below (the "Term").

### 7.2 Termination

7.2.1 Either party may, by written notice of default to the other party, terminate this Agreement, if the other party materially breaches this Agreement, and the breaching party does not cure such material breach within thirty (30) calendar days after receipt of written notice of such breach. Licensor may by written notice terminate this Agreement immediately following Licensee's failure to resolve the suspension of business, insolvency, institution of bankruptcy, liquidation proceedings by or against the Licensee, appointment of a trustee or receiver for Licensee's property or business, or any assignment, reorganization or arrangement by Licensee for the benefit of its creditors.

7.2.2 Either Party may terminate this Agreement upon providing at least 90 days' prior written notice of such termination to the other Party.

7.2.3 Upon termination of this Agreement, all licenses, and any other rights and services provided by Licensor as set forth in this Agreement, shall cease immediately. Additionally upon termination, Licensee must immediately erase or destroy all electronic manifestations of the LMS Services and, at Licensor's option, either destroy or return to Licensor all physical and other copies of the LMS Services and accompanying documentation (if any). Further any amounts due under Section 3 shall immediately become due and payable to Licensor within 30 days of termination.



### 7.3 Survival.

The obligations and duties with respect to Sections 3 (Payments), 5 (Licensee Obligations), 6 (Compliance), 8 (Ownership), 12 (Indemnity), and 16 (Confidentiality) shall survive the termination of this Agreement.

## 8. Ownership

8.1 Licensors reserves all rights not expressly granted to Licensee in this Agreement. Licensors retains all title, interest and ownership of all intellectual property rights in and to the LMS Services and any accompanying documentation, including, but not limited to, all copyright, patent, trademark, trade secret, and rights and interests of every kind or nature in and to all works based upon, incorporated in, derived from, incorporating or relating to the LMS Services and documentation or from which the LMS Services are derived, as well as the right to exploit any of the foregoing in all media and by any manner and means now known or hereafter devised.

8.2 Except as set forth herein, any and all trademarks, trade names, and logos used in the LMS Services are and shall remain the exclusive property of Licensors. This Agreement gives Licensee no right to use any such trademarks or trade names or logos without the express written permission of Licensors (other than the incidental display of any of Licensors's trademarks or trade names or logos in use of the LMS Services as designed by Licensors), which permission may be withheld by Licensors for any reason and at its sole discretion. Licensee agree that all uses of any trademarks, trade names or logos contained within the LMS Services shall inure to the benefit of Licensors. From time to time, Licensors may allow limited rebranding of the LMS Services to display the Licensee's logos or trademarks at Licensee's request. In such a case, the Licensee's logos and trademarks shall remain the exclusive property of Licensee.

8.3 During the term of this Agreement and thereafter, Licensee shall not contest or otherwise challenge or attack Licensors's rights in the LMS Services or any intellectual property rights of Licensors used or included in the LMS Services or the validity of the license herein granted.

## 9. Representations and Warranties By Licensee

Licensee represents and warrants that the undersigned has the legal capacity to enter into this Agreement, that Licensee will use the LMS Services only for lawful purposes and in accordance with this Agreement, and that Licensee will not use the LMS Services to violate any law, regulation or ordinance or any right of Licensors, its licensors or any third party, including, without limitation, any right of privacy, publicity, copyright, trademark, patent or other intellectual property rights.

## 10. Warranties

10.1 Licensee warrants that (a) it has authority to perform its obligations under this Agreement under authority granted in Chapter 106, Texas Education Code; (b) it has all necessary power and has received all necessary approvals to execute and deliver this Contract; and (c) the representative signing this Agreement on its behalf is authorized by its governing body to sign this Agreement.

10.2 Licensors warrants, represents, covenants, and agrees that (a) it is duly organized, validly existing and in good standing under the laws of the state of its incorporation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Licensors; (b) it is not indebted to the State of Texas and is current on all taxes owed to the State of Texas and agrees that any payments owing to Licensors under the Agreement may be applied directly toward any debt or delinquency that Licensors owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full. (Texas Government Code, Sections 2107.008 and 2252.903); and (c) pursuant to Texas Family Code Section 231.006, Texas Government Code Sections 2155.004 and 2155.006, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this representation and warranty is inaccurate.

10.3 DISCLAIMER OF WARRANTIES. LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE LMS SERVICES IS AT LICENSEE'S SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LMS SOFTWARE, LMS SERVICES AND SUPPORT SERVICES (IF ANY) ARE PROVIDED "AS IS," WITH ANY AND ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 10, LICENSOR AND ITS LICENSORS HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE LMS SERVICES AND SUPPORT SERVICES (IF ANY), EITHER EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. LICENSOR DOES NOT WARRANT THAT THE LMS SERVICES AND SUPPORT SERVICES (IF ANY), ARE ERROR-FREE OR WILL BE UNINTERRUPTED, FREE FROM SPYWARE, MALWARE, ADWARE, VIRUSES, WORMS OR OTHER MALICIOUS CODE, OR WILL FUNCTION TO MEET LICENSEE'S REQUIREMENTS.

11. Limitation of Liability

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL LICENSOR BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, LOSS OF PRIVACY, DENIALS OF SERVICE (INCLUDING COMPUTER CRASHES), BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO LICENSEE'S USE OR INABILITY TO USE THE LMS SERVICES, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, OR OTHERWISE), EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL LICENSOR'S TOTAL LIABILITY TO LICENSEE FOR ALL DAMAGES EXCEED THE RESPECTIVE PAYMENTS MADE TO LICENSOR BY LICENSEE PURSUANT TO SECTION 3 OF THIS AGREEMENT.

12. Indemnity

12.1 If Licensee promptly notifies Licensors in writing of a third party claim against Licensee that LMS Services infringe a United States patent in existence as of the Effective Date, or a copyright or a trade secret of any third party, Licensors will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Licensee. Licensors will not indemnify Licensee, however, if the claim of infringement is caused by (a) Licensee's misuse or modification of the LMS Services; (b) Licensee's failure to use corrections or enhancements made available by Licensors; (c) Licensee's use of the LMS Services in

combination with any product or information not owned, developed or authorized for such use by Licensor; or (d) information, directions, specifications or materials provided by or on behalf of Licensee. If any of the LMS Services is, or in Licensor's opinion is likely to be, held to be infringing, Licensor will, at its expense and option, either (i) procure the right for Licensee to continue using the LMS Services, (ii) replace the LMS Services with a non-infringing equivalent, (iii) modify the LMS Services to make it non-infringing or (iv) direct the return of the LMS Services and refund to Licensee the fees paid for the LMS Services less, a reasonable amount for Licensee's use of the LMS Services up to the time of return. The foregoing remedies constitute Licensee's sole and exclusive remedies and Licensor's entire liability with respect to infringement.

12.2 TO THE EXTENT ALLOWED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, LICENSEE AGREES TO INDEMNIFY AND HOLD LICENSOR AND ITS AFFILIATES HARMLESS FROM ANY CLAIMS, PROCEEDINGS, DAMAGES, COSTS, AND EXPENSES ARISING OR RESULTING FROM LICENSEE'S USE OF THE LMS SERVICES, INCLUDING, WITHOUT LIMITATION, CLAIMS THAT THE CONTENT INFRINGES, VIOLATES OR MISAPPROPRIATES INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.

13. **U.S. Government Restricted Rights and Export Provisions**

13.1 The LMS Services are "commercial computer software" or "commercial computer software documentation." The United States Government's rights with respect to the LMS Services are limited by the terms of this License Agreement, pursuant to FAR § 12.212(a) and/or DFARS § 227.7202-1(a), as applicable.

13.2 Licensee agree by installing, copying, or otherwise using the LMS Services that:

13.2.1 Licensee does not reside in a country subject to embargo or export controls by the U.S. Government;

13.2.2 Licensee is not on the List of Denied Persons as published by the U.S. Government; and

13.2.3 Licensee will not use the LMS Services for any illegal purpose.

13.3 Because the LMS Services and related technical data are subject to United States export controls, Licensee agree that it shall not export or "re-export" (transfer) the LMS Services unless it has complied with all applicable U.S. export controls. To the extent allowed by the Constitution and laws of the state of Texas, Licensee indemnifies and holds Licensor and its licensors harmless from and against any liability that may arise from Licensee's failure to comply with all export control laws and regulations.

14. **Assignability**

Licensee shall not sublicense, or otherwise transfer its rights or obligations under this Agreement, or any part thereof, to any third party, nor otherwise permit the use thereof by any third party without the prior, express, written approval of Licensor. Any attempted assignment in derogation hereof shall be null and void.

15. **No Partnership or Joint Venture**

The parties are independent contractors and shall have no authority to obligate or bind the other in any respect, and no agency, partnership, franchise, joint venture or employment relationship is intended or created by this Agreement. Neither party shall make any warranties or representations on behalf of the other party.

16. Confidentiality

16.1 The parties acknowledge that by reason of their relationship under this Agreement, they may have access to and acquire material, data, systems and other information concerning the operation, software pricing, business, projections, market goals, financial affairs, products, services, customers and intellectual property rights of the other party that may not be accessible or known to the general public, including, but not limited to, the terms of this Agreement, and any information which concerns technical details of operation of the LMS Services (collectively, "Confidential Information") of the other party.

16.2 Each party receiving Confidential Information (the "Receiving Party") agrees to maintain all such Confidential Information received from the other party (the "Disclosing Party"), both orally and in writing, in confidence and agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the Disclosing Party. The Receiving Party further agrees to use the Confidential Information only for the purpose of performing under this Agreement. Licensee agrees to treat the source code and object code of the LMS Services as Confidential Information.

16.3 Notwithstanding the foregoing, the obligations set forth herein shall not apply to Confidential Information which:

16.3.1 is or becomes a matter of public knowledge through no fault of or action by the Receiving Party;

16.3.2 was lawfully in the Receiving Party's possession prior to disclosure by the Disclosing Party;

16.3.3 subsequent to disclosure, is rightfully obtained by the Receiving Party from a third party who is lawfully in possession of such Confidential Information without restriction;

16.3.4 is independently developed by the Receiving Party without resort to the Confidential Information; or

16.3.5 is required by law or judicial order, provided that the Receiving Party shall give the Disclosing Party prompt written notice of such required disclosure in order to afford the Disclosing Party an opportunity to seek a protective order or other legal remedy to prevent the disclosure, and shall reasonably cooperate with the Disclosing Party's efforts to secure such a protective order or other legal remedy to prevent the disclosure.

16.4 Each party acknowledges that a breach by the other party of any confidentiality or ownership provision of this Agreement may cause the non-breaching party irreparable damage, for which the award of damages would not be adequate compensation. Consequently, the non-breaching party may institute an action to enjoin the breaching party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and a party may seek entry of an injunction enjoining any breach or threatened

breach of those provisions, in addition to any other relief to which the non-breaching party may be entitled at law or in equity.

17. **Infringement**

Licensee shall notify Licensor in writing of any third party infringements of the LMS Services that come to the attention of Licensee. Licensee agrees to cooperate fully with Licensor in the prosecution of any infringement action and/or claim against a third party.

18. **Miscellaneous Provisions**

18.1 This Agreement shall be construed under and governed by and enforced in accordance with the laws of the state of Texas, without regard to its principles of conflicts of laws and the parties hereto expressly consent to personal jurisdiction in Harris County, Texas (U.S.A.), which shall be the exclusive jurisdiction for any action brought in connection with this Agreement or any rights affected by exercise of the terms hereof. Each party hereto also irrevocably waives any objection on the grounds of venue, *forum non conveniens* or any similar objection, and irrevocably consents to service of process by mail to the address set forth herein for each party.

18.2 Neither party shall be in material breach for any delay or failure in performance under this Agreement or interruption of service resulting directly or indirectly from acts of God, or any causes beyond the reasonable control of such party.

18.3 If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, the remainder of this Agreement shall continue in full force and effect.

18.4 This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, whether written or oral. This Agreement shall not be modified except by a written agreement signed by an authorized representative of the party against whom such modification is sought to be enforced. Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that provision.

18.5 This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Agreement.

18.6 Unless otherwise expressly provided, no provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than Licensor and Licensee any rights, remedies or other benefits, under or by reason of this Agreement.

18.7 Licensor shall not use Licensee's name, logo or likeness in any press release, marketing materials or other public announcement without receiving Licensee's prior written approval.

18.8 To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Licensee and Licensor to attempt to resolve any claim for breach of contract made by Licensor that cannot be resolved in the ordinary course of business. Licensee's Provost/Vice President for Academic Affairs shall examine Licensor's

claim and any counterclaim and negotiate with Licensor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Licensor; (ii) neither the issuance of this Agreement by Licensee nor any other conduct, action or inaction of any representative of Licensee relating to this Agreement constitutes or is intended to constitute a waiver of Licensee's sovereign immunity to suit other than as expressly otherwise provided in this Agreement; and (iii) Licensee has not waived its right to seek redress in the courts.

18.9 The persons signing below on behalf of Licensor and Licensee, respectively, warrants that he/she has the authority to execute this Agreement on behalf of its respective party according to its terms.

19. **Notices**

Any notice required to be given by either party to the other shall be deemed given if in writing and actually delivered or deposited in the United States mail in registered or certified form with return receipt requested, postage paid, addressed to the notified party at the address set forth in this Agreement. Each party agrees to provide the other notice of any change of address.

20. **Arms-Length Transaction**

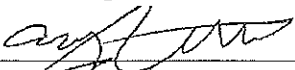
The Licensor and Licensee agree and acknowledge that this Agreement was entered into at arms' length and in the ordinary course of business.

21. **Insurance**

Licensee is insured for general liability insurance under a self-insurance program covering its limits of liability and such self-insurance will satisfy any Licensee insurance obligations in the Agreement. For the entire term of the Agreement ("Term"), Licensor shall maintain Comprehensive General Liability insurance coverage of \$1,000,000 per occurrence. If, during the Term, Licensor will enter Licensee property, Licensor shall also maintain the following insurance: (i) Worker's Compensation coverage with statutory limits for the State of Texas, including Employers Liability coverage of \$500,000 per accident; (ii) Commercial Automobile Liability coverage of \$1,000,000 Combined Single Limit; (iii) for engineers and architects only: Professional Liability coverage of \$5,000,000 per occurrence; and (iv) for builders only: Builder's Risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against Licensee. Comprehensive General Liability and Commercial Automobile Liability policies must name Licensee as Additional Insured. Licensor shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by Licensee. Licensor shall provide Licensee Certificates of Insurance evidencing these insurance requirements prior to the start of work.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be made and executed by duly authorized officers as of the Effective Date.

**KAPLAN GLOBAL SOLUTIONS, LLC  
D/B/A COLLOQUY**

By: 

Name: Amjed Saffarini

Title: President

**TEXAS SOUTHERN UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_