

**MASTER SERVICES AGREEMENT
TO FACILITATE DISTANCE LEARNING PROGRAMS**

This Master Services Agreement and its Schedules and Attachments (this "Agreement") is effective as of August 1, 2014 ("Effective Date"), by and between Kaplan Global Solutions, LLC, d/b/a Colloquy, a Delaware limited liability company whose address is 3333 South Congress Avenue, Suite 100, Delray Beach, Florida 33445 ("Colloquy"), and Alabama State University, a not-for-profit educational institution whose address is 915 S Jackson Street, Montgomery AL 36104. ("University"). (Colloquy and University are referred to individually as a "Party" or together as the "Parties").

RECITALS

University seeks to develop, promote and deliver online educational curricula, courses and programs ("Distance Learning Programs"), and Colloquy desires to provide to the University certain services as further described below in connection with such Distance Learning Programs.

In consideration of the mutual promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

AGREEMENT

1. IDENTIFYING AND IMPLEMENTING DISTANCE LEARNING PROGRAMS

1.1 Execution of Distance Learning Programs and Other Services.

- a) During the course of working together under this Agreement, the Parties will work together to identify and implement approaches to substantially grow Distance Learning Programs at University.
- b) The University and Colloquy will sign a Services Description for each Distance Learning Program that Colloquy will design and develop, and for any other services that University wishes Colloquy to provide (each, a "Services Description"). Each Services Description will be considered a part of this Agreement, and will describe the Services, deliverables, fees, payment schedule (as applicable) and other relevant information. A sample Services Description is attached as Exhibit A. If there is a conflict between a Services Description and the Agreement, the Services Description prevails.

2. RESPONSIBILITIES

2.1 Personnel and Management.

- a) DL Directors. Each Party will designate one individual who will serve as that Party's primary representative for purposes of this Agreement (the "Distance Learning Director" or "DL Director"). The DL Directors will (a) have overall responsibility for managing and coordinating the performance of that Party's obligations under this Agreement and (b) be authorized to act for and on behalf of that Party with respect to all day to day matters relating to this Agreement. A Party may change the DL Director from time to time and the DL Directors may delegate his or her responsibilities to other employees or subcontractors of that Party, as he or she deems appropriate, all upon notice to the other Party.
- b) Steering Committee. The Parties will organize a "Steering Committee" consisting of the DL Directors and such other personnel as the Parties may determine are necessary for efficient administration of this Agreement. The Steering Committee will oversee collaboration between the Parties to further the Distance Learning Programs and monitor completion of the tasks set forth in the Services Description. The Steering Committee will meet as mutually agreed. Each Party will each bear its own expenses and

that of their respective Steering Committee members related to their participation in Steering Committee meetings.

3. FEES, INVOICING, AND PAYMENT

3.1 Fees for the Distance Learning Programs. University acknowledges that these fees are strictly confidential unless the law requires otherwise. Except as otherwise provided below, the University will pay Colloquy as described below in connection with all the Distance Learning Programs contemplated under this Agreement:

- a) **Revenue Share.** For the services provided hereunder and under each Services Description, University will pay Colloquy an agreed upon percentage of all Student Fees (as defined below) charged to students in connection with each Distance Learning Program, as set forth in the applicable Services Description. For purposes hereof and of any Services Description, "Student Fees" shall mean the aggregate amounts charged to students for (i) tuition and matriculation fees ("Student Instruction Fees"), (ii) books and materials ("Books and Materials Fees"), and (iii) third party content, software, systems, services or other resources ("Third Party Fees").
- b) **Curriculum, Content, or Instructional Design and Support Fees.** As expressly agreed in connection with the University approved Services Descriptions, Colloquy's efforts associated with curriculum, content, and instructional support or design services will be paid by University on a time and materials basis using Colloquy's then current generally applicable rates. Such chargeable activities will be expressly identified as such in the Services Description.

3.2 Invoicing and Payment Due.

- a) Colloquy may deliver invoices electronically.
 - b) University will provide Colloquy a report detailing all Student Fees, broken out by Student Instructional Fees, Books and Materials Fees and Third Party Fees, charged or otherwise accrued for each Distance Learning Program course during each term ("Fees Report"). University will provide the Fees Report to Colloquy on the fifth day after the deadline University sets for students to add or drop classes. University will pay Colloquy its agreed percentage of the Student Fees following any reconciliation procedure set forth in the applicable Services Description, and in any event, no later than 30 days after the Fee Report is due to Colloquy. The percentage of Student Fees to be paid to Colloquy will be set forth in each respective Service Description Agreement.
 - c) All other fees will be invoiced by Colloquy as set forth in the applicable Services Description. Unless otherwise agreed by the Parties in a Services Description, all fees will be due and payable within 30 days after University's receipt of the invoice. University must give Colloquy notice of any dispute regarding an invoice within 30 days of its receipt of such invoice.
- 3.3 Interest.** All fees to be paid by the University to Colloquy shall be timely processed by the University. Amounts not paid by the University to Colloquy when due will accrue interest at the rate of 1.5% per month (or the maximum rate permitted by law, if such rate is lower).
- 3.4 Suspension of Services for Non-Payment.** If a payment is late and is not subject to a good-faith dispute of which University promptly made Colloquy aware or such good-faith dispute is not resolved within 30 days of initiation, Colloquy may suspend its performance obligations under this Agreement, without penalty or liability to Colloquy.
- 3.5 Taxes.** The fees are exclusive of any sales, use, gross income, occupational, or similar taxes; import or export fees; duties, imports or tariffs; or any other taxes, duties, charges, or fees of any kind which may be levied in connection with the transactions covered under this Agreement. Such taxes are the responsibility of the University, and University will indemnify and hold Colloquy harmless from any liability with respect

to such taxes. Each Party shall be responsible for its own income tax, and for any sales, lease, use, personal property or other such taxes on equipment, software or property it owns or leases from a third party.

4. PROPRIETARY RIGHTS

4.1 **Ownership.** Except for the licenses and other rights expressly granted in this Section, as between the Parties, each Party retains all right, title, and interest in and to its intellectual property rights (including materials embodying such intellectual property rights). Intellectual property rights mean all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (i) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask work rights; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patent and industrial property rights; (v) other proprietary rights in intellectual property of every kind and nature; and (vi) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (i) through (vi) of this sentence.

As between the Parties, all intellectual property rights (including materials embodying such rights) arising or created under this Agreement or any Services Description ("Developments") will be owned as follows:

- a) All University intellectual property rights that are incorporated into any Developments will remain the property of the University ("University IP"). For example, it is anticipated that, as between the Parties, University will own the course content contributed by University employees or University's ISME(s) that is incorporated into the Development. University, its employees and its ISME(s) will determine ownership among them.
 - b) All Colloquy intellectual property rights embedded, commingled or otherwise a part of the Developments will remain the property of Colloquy and Colloquy will own any new intellectual property rights arising in connection with any Developments created hereunder or under any Services Description, except to the extent such rights consist of University IP. For example, it is anticipated that Colloquy will own the underlying templates, wireframes and know-how for each course. In addition, any intellectual property rights embedded, commingled or otherwise a part of any reports, presentations or other materials Colloquy prepares in contemplation of a proposed Distance Learning Program that the parties decide not to pursue shall remain the property of Colloquy.
 - c) Each Party agrees to execute all documents necessary to effectuate the ownership and license rights contemplated under this Section.
- 4.2 **License Grant.** Each Party grants to the other Party a worldwide, non-exclusive, fully-paid up right and license during the term of this Agreement and any applicable Services Description, to use, copy, maintain, modify, enhance, display, perform, distribute or create derivative works of its intellectual property rights (including materials embodying such) provided or made available to the other Party under this Agreement to the extent necessary to perform obligations under and receive the intended benefits of this Agreement, subject to the University's payment of all fees due or arising hereunder.
- 4.3 **Third Party Materials.** To the extent a Party provides or uses any third party materials (including software) under this Agreement to the other Party, such Party shall be responsible for obtaining the applicable license or other rights with respect to such materials. In addition, each Party shall comply with any applicable third party restrictions or limitations regarding such third party materials made known to such Party.
- 4.4 **Trademarks.** Each Party agrees that the other Party's trademarks licensed hereunder shall be utilized and displayed in accordance with policies and procedures determined by the Steering Committee. Each Party shall have the right to exercise quality control over the use of its trademarks to the degree necessary, in its sole opinion, to maintain the validity and enforceability of such trademarks and to protect the goodwill associated therewith.

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- 4.5 Reservation. Each Party retains all rights not expressly granted or licensed pursuant to this Agreement. Notwithstanding anything to the contrary, University will not resell, distribute, or create any derivative works of the Distance Learning Programs or other Colloquy intellectual property or materials.
- 4.6 Residuals. Nothing contained in this Agreement shall restrict either Party from the use of any general ideas, concepts or know-how which either Party, individually or jointly, develops or discloses under this Agreement, provided that in doing so such Party does not breach its obligations regarding confidentiality, infringe or misappropriate the intellectual property rights of the other Party or third parties, or breach Section 10.2 (Right of First Refusal; Competing Programs) of this Agreement.

5. CONFIDENTIALITY

- 5.1 General Obligations. Except as otherwise provided in this Agreement, the Parties agree that the terms of this Agreement and all information, data, materials or technology communicated by a Party to the other Party that is marked as "Confidential" or "Proprietary," or that, under the circumstances taken as a whole, would be reasonably deemed to be confidential ("Confidential Information") will be received in strict confidence, will be used only for purposes of this Agreement, and will not be disclosed by the receiving Party, or its agents, without the prior written consent of the disclosing Party. Each Party agrees to use the same means to protect the disclosing Party's Confidential Information that it uses to protect its own Confidential Information, but in any event not less than commercially reasonable means, to prevent disclosure to outside parties. Confidential Information of Colloquy will include this Agreement, and Services Descriptions. Notwithstanding anything to the contrary herein, a receiving Party will only disclose Confidential Information of the disclosing Party to the receiving Party's personnel who need to know such Confidential Information in connection with this Agreement. Each receiving Party will advise its employees and representatives to whom disclosure of Confidential Information of the disclosing Party is made, of the obligations hereunder to protect such Confidential Information and such employees and representatives will have agreed to obligations of confidentiality substantially similar to those herein. Confidential Information will not include information that is (i) already known by the receiving Party without an obligation of confidentiality other than pursuant to this Agreement; (ii) publicly known or becomes publicly known through no unauthorized act of the receiving Party; (iii) rightfully received from a third party without an obligation of confidentiality; and (iv) independently developed without use of the other Party's Confidential Information.
- 5.2 Return and Destruction of Confidential Information. Each Party will, upon expiration or termination of this Agreement or otherwise upon demand, at the disclosing Party's option, either return to the disclosing Party or destroy and certify in writing to the disclosing Party the destruction of any and all documents (including any writing, instrument, agreement, letter, memorandum, chart, graph, blueprint, photograph, financial statement or data, telex, facsimile, cable, tape, disk or other electronic, digital, magnetic, laser or other recording or image in whatever form or medium), papers and materials and notes thereon in the receiving Party's possession, including copies or reproductions thereof, to the extent they contain Confidential Information of the disclosing Party.
- 5.3 Requests for Documents. If either Party is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in that Party's possession by reason of the Agreement, the Party receiving the request must immediately give notice and the other Party will have the opportunity to contest such process by any means available to it before the records, data or documents are submitted to a court or other third party. The Party receiving the request, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

6. REPRESENTATIONS; WARRANTIES; AND COVENANTS

- 6.1 Representations and Warranties. Each Party represents and warrants, as of the Effective Date and throughout the Term, the following.
- a) That Party is: (i) in the case of Colloquy, a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware; and (ii) in the case of University, a state agency, duly, validly existing and in good standing under the laws of the State of Alabama;
 - b) That Party has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement; and
 - c) The execution, delivery and performance of this Agreement will not conflict with, result in a breach of or constitute a default under any other agreement to which that Party is bound.
- 6.2 Performance. Each Party will perform its obligations under this Agreement in a professional and workmanlike manner, in accordance with applicable industry and professional standards.
- 6.3 DISCLAIMER. EXCEPT AS SPECIFIED IN THIS ARTICLE 6 NEITHER COLLOQUY NOR UNIVERSITY MAKES ANY REPRESENTATION OR WARRANTIES WITH RESPECT TO THIS AGREEMENT, AND EACH EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 6.4 Authority. Each party represents and warrants to the other that (a) the Agreement constitutes a valid, legal and binding obligation of such party, enforceable against it in accordance with its terms; (b) no consent, approval or authorization of any third party or any governmental body or officer is required for the valid and lawful execution and delivery of the Agreement, any Services Description, and any obligations in any of these documents, including to provide or pay for services rendered, as applicable; ; and (c) the person signing this Agreement on behalf of each party is duly authorized to bind such party to these terms. In addition, this Agreement has either been approved by University's Board of Trustees or University has been delegated such approval

7. TERM AND TERMINATION

7.1 Term: Program Term.

- a) This Agreement is effective as of the Effective Date and will continue until one Party gives the other at least six months' prior written notice of termination. Termination of this Agreement does not terminate any Distance Learning Programs or Program Terms (defined below).
- b) The term for any Distance Learning Program is seven years ("Program Term") from the commencement of classes for that Program ("Start Date"). A Program Term will automatically renew for an additional seven-year term ("Renewal Term") (and so on) unless one Party gives the other written notice of termination of that Program, which notice must be given at least 90 days before the end of that Program Term. Notice of termination of this Agreement under Section 7.1 (a) will serve as notice that each Distance Learning Program will be terminated at the end of its Program Term. With respect to any Program that is expiring and not being renewed, Colloquy will continue to provide marketing and enrollment management services until 30 days prior to the program expiration or termination. University shall consider for admission any student that has a completed application pending on the program expiration date. After the program expiration, the program will continue for a "teach-out" period until each student enrolled in the program at the program expiration date, and each student that had an application pending at the program expiration date that becomes enrolled in the program, shall have completed or withdrawn from the program, and Colloquy will continue to receive its revenue share for such program with respect to students being "taught out."

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7.2 Termination. This Agreement, or the impacted Distance Learning Program(s) and related Services Description, may be terminated by either Party if:

- a) a Party (i) commits a material breach that is capable of cure within 30 days and fails to cure such breach within 30 days after receipt of written notice of such material breach, or (ii) commits a material breach that is not capable of cure within 30 days, and fails to take reasonable steps to cure such breach thereafter;
- b) a Party (i) files a petition in bankruptcy or a petition in bankruptcy is filed against the other Party which is not vacated within sixty (60) days; or (ii) becomes insolvent or makes an assignment for the benefit of creditors or any arrangement pursuant to any bankruptcy law.

7.3 Termination Precursor. Notwithstanding anything to the contrary, neither Party may terminate this Agreement or any Distance Learning Program prior to the conclusion of good faith discussions between University's Provost and Colloquy's President.

7.4 Effect of Termination or Expiration. Upon any termination or expiration, University will pay all amounts that are outstanding under the Agreement, including all unrecovered fees and costs incurred by Colloquy up to and including the termination date, including any balance sheet items or deferred or heldback fees. If a dispute arises, the University will not make any final payment of amounts outstanding under the agreement until an audit is conducted by a reputable accounting firm and the amount outstanding is agreed to by the parties. The party requesting the audit will be responsible for the costs of the audit, and the audit must be completed within 90 days. The University will continue to be obligated to pay Colloquy all Student Instructional Fees and Third Party Fees arising from any distance learning programs that are the same as or similar to the Distance Learning Programs after the Term expires or is terminated that are in breach of Section 10.8 or the other provisions of this Agreement.

8. INDEMNITIES

8.1 Indemnification. Each Party (in each case, an "Indemnifying Party") will indemnify, defend and hold harmless the other Party and its Affiliates, and each of their officers, directors, employees, subcontractors, vendors, successors and assigns (the "Indemnified Parties") from and against, any losses, liabilities, damages, fines, penalties, settlements, judgments, and interest (including taxes) arising out of a third party claim against an Indemnified Party, in each case that a court finally awards to a third party or which are included in the amount of any settlement paid to a third party and agreed to by the Party financially responsible for such settlement, and all reasonable and related costs and expenses, paid by the Indemnifying Party as incurred ("Losses"), resulting directly from any of the following:

- a) The Indemnifying Party's breach of its obligations of confidentiality set forth in Section 5 of this Agreement.
- b) Injury, illness, death, or damage to any tangible personal or real property (other than data or software) caused by or arising from or relating to the grossly negligent acts or omissions of the Indemnifying Party in connection with this Agreement.

8.2 Infringement Indemnity.

- a) Indemnity. Upon notification to an Indemnifying Party in writing of a third party claim against an Indemnified Party that the Party's intellectual property or materials (each, for purposes of this Section 8.2, an "Item") infringes or misappropriates an intellectual property right of any third party, the Indemnifying Party will defend Indemnified Parties and indemnify and hold Indemnified Parties harmless from and against all Losses paid or payable by the Indemnified Party to such third party (or any other party to which such third party has assigned or transferred its claim) related to that claim.

b) **Exclusions from Infringement Indemnity.** An Indemnifying Party will not indemnify an Indemnified Party, however, to the extent (i) the Indemnified Party's failure to notify the Indemnifying Party of the claim of infringement or misappropriation prejudices the Indemnifying Party's ability to provide indemnification hereunder; or (ii) the claim is caused by (1) any Indemnified Party's use or modification of the Item that is not reasonably contemplated under the Agreement; (2) any Indemnified Party's use of the Item in combination with any product or information not approved or reasonably contemplated by the Indemnifying Party; (3) information, direction, specification or materials provided in writing by the Indemnified Party or any third party authorized to act on the Indemnified Party's behalf, or (4) the Indemnified Party's failure to use corrections or modifications made available the Indemnifying Party, if such corrections or modifications would have prevented the claim. If any Item is, or in the Indemnifying Party's opinion is likely to be, held to be infringing, the Indemnifying Party will, at its expense, promptly (A) procure the right for the Indemnified Party to continue using it, (B) replace it with a non-infringing equivalent, or (C) modify it to make it non-infringing (so long as it is in all material respects functionally equivalent to the infringing Item). In such event, the Parties will seek to establish mutually acceptable alternative arrangements and to make any appropriate adjustments to their respective obligations under this Agreement through the execution of an amendment to this Agreement.

8.3 **Indemnification Procedures.** If any third-party claim is commenced against an Indemnified Party under this Article 8, notice thereof will be given to the Indemnifying Party as promptly as practicable. If, after such notice, the Indemnifying Party will acknowledge that this Agreement applies with respect to such claim, then the Indemnifying Party will be entitled, if it so elects, in a notice promptly delivered to the Indemnified Party, but in no event less than fifteen (15) business days prior to the date on which a response to such claim is due, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to the Indemnified Party to handle and defend the same, at the Indemnifying Party's sole cost and expense. The Indemnified Party will cooperate, at the cost of the Indemnifying Party, in all reasonable respects with the Indemnifying Party and its attorneys in the investigation, trial and defense of such claim and any appeal arising therefrom; provided, however, that the Indemnified Party may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy other than the payment of money by the Indemnifying Party will be entered into without the consent of the Indemnified Party. After notice by the Indemnifying Party to the Indemnified Party of its election to assume full control of the defense of any such claim, the Indemnifying Party will not be liable to the Indemnified Party for any legal expenses incurred thereafter by such Indemnified Party in connection with the defense of that claim. If the Indemnifying Party does not assume full control over the defense of a claim subject to such defense as provided in this Section, the Indemnifying Party may participate in such defense, at its sole cost and expense, and the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of the Indemnifying Party.

9. LIABILITY; LIMITATION OF LIABILITY

9.1 **WAIVER OF CONSEQUENTIAL DAMAGES.** EXCEPT AS PROVIDED IN SECTION 9.3, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, COLLATERAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, INCLUDING LOSS OF USE, LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF DATA, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2 **Damages Cap.** Except as provided in Section 9.3, the total aggregate liability of each Party for all claims asserted by the other Party under or in connection with this Agreement, regardless of the form of the action or the theory of recovery, will be limited to the amount of fees paid to Colloquy under this Agreement with respect to the Distance Learning Program(s) relating to such liability.

- 9.3 Exceptions to Limitation of Liability. The limitations of liability set forth in Section 9.1 and Section 9.2 will not apply with respect to (a) amounts paid with respect to third party claims that are the subject of indemnification under Section 8; (b) Losses occasioned by a breach of a Party's obligations of confidentiality under Section 5; (c) fees due and payable to Colloquy under this Agreement.

10. MISCELLANEOUS PROVISIONS

- 10.1 Assignment. Neither Party will assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's prior written consent as part of a merger, or a sale or transfer of substantially all of the assigning Party's assets. This Agreement will be binding upon, enforceable by, and inure to the benefit of the Parties and their respective successors and permitted assignees.

10.2 Right of First Refusal: Competing Programs.

- a) The Parties acknowledge that the development of engaging curriculum specifically designed for on-line consumption is a key factor in making on-line programs successful. Before University (either itself or through third Party) begins to design curriculum or develop course content for any Distance Learning Program (a "New Program"), University will (i) give Colloquy notice of such New Program, setting forth the requirements, timeline and anticipated budget for the New Program, and (ii) unless, Colloquy advises University that it is unable or unwilling to provide the requested services, negotiate with Colloquy in good faith regarding an SDA for such New Program. If Colloquy and the University are unable to reach agreement on an SDA for such New Program within 60 days of Colloquy's receipt of notice of such initiative, then University may complete these services itself or through third Parties.
- b) During the Term and for 24 months after such date or the date that the last student completes any Distance Learning Program under this Agreement, whichever is later, the University will not itself or through any third party, develop, market, or provide any distance learning programs that are the same as or similar to those developed under any Services Description. If University breaches the foregoing, Colloquy shall be entitled to that portion of the fees as described in Section 3.1(a) if this Agreement, without limiting its other rights and remedies under this Agreement, at law, or in equity.

- 10.3 Force Majeure. If and to the extent that a Party's performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by a force majeure event, and such Party is without fault, then such Party will be excused for such non-performance, hindrance or delay of those obligations affected by the force majeure event for as long as such force majeure event continues and such Party continues to use its best efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans and other means. The Party whose performance is prevented, hindered, or delayed by a force majeure event will promptly notify the other Party of the occurrence of the force majeure event and describe in reasonable detail the nature of the force majeure event. The occurrence of a force majeure event does not excuse, limit, or otherwise affect University's obligation to pay Colloquy amounts due in accordance with this Agreement.

- 10.4 Changes in Law. University will be responsible for monitoring laws applicable to University and its business, and laws applicable to the students. University shall promptly give written notice to Colloquy of any change in such laws that affects, or is reasonably likely to affect the Distance Learning Programs or the other Colloquy provided resources made available under this Agreement. The Parties will work together to identify the effect of changes in such laws, and will discuss modifications to the Distance Learning Programs, if any, necessary to comply with such changes. If there is a change in laws, University shall be responsible for the costs to comply. If any change in law, or any change required to conform to a change in law results in a material cost or has a material adverse effect on the Distance Learning Programs, then Colloquy may terminate the affected portion of the Distance Learning Programs (or all portions, if

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applicable) as of the date specified by Colloquy. For the purposes of this Section, "law" means any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction of or by any governmental authority, including any Federal, state, municipal, local, territorial, or other governmental department, regulatory authority, judicial or administrative body, whether domestic, foreign or international.

10.5 Notices. All notices required or given under this Agreement will be delivered to the individuals, at the addresses, set forth below (or such other individuals and address (es) as may be provided by written notice in accordance with this Section). The notices must be given in writing and delivered either by hand, by certified mail, return receipt requested, postage pre-paid, or by Federal Express or other commercial overnight delivery service with tracking capabilities, all delivery charges prepaid. Notice also may be given by facsimile, provided that the sending Party receives electronic confirmation of receipt. Each notice will be deemed effective and given upon receipt by the Party being served, provided, however, that any notice sent by mail will, unless received sooner, be deemed received five (5) days after deposit in the U.S. mail or ten (10) days after deposit in any foreign mail system.

<u>Colloquy</u>	<u>University</u>
Colloquy Attention: Colloquy General Manager, 3333 South Congress Avenue Suite 100 Delray Beach, Florida 33445	Alabama State University Attention: Provost 915 S Jackson Street Montgomery AL 36104-0271
With a copy to: Colloquy Attention: Legal Department 395 Hudson St., 4th Floor New York, NY 10014	With a copy to: Alabama State University Attention: Office of General Counsel 915 S. Jackson Street Montgomery, Alabama 36104

10.6 Counterparts: Signatures. This Agreement may be executed (a) in any number of counterparts, each of which will be deemed an original, but all of which taken together will constitute one single agreement between the Parties and (b) by facsimile signature and facsimile signatures will be fully binding and effective for all purposes and will be given the same effect as original signatures.

10.7 Relationship. The Parties intend to create an independent contractor relationship and nothing contained in this Agreement will be construed to make either Colloquy or University partners, joint venturers, principals, agents, or employees of the other. No officer, director, employee, agent, affiliate, or contractor retained by University to perform work on Colloquy's behalf under this Agreement will be deemed to be an employee, agent, or contractor of Colloquy. Neither Party will have any right, power or authority, express or implied, to bind the other.

10.8 Audit. Each Party and its representative shall have the right to audit the other in connection with this Agreement during regular business hours, upon not less than fifteen (15) days written notice, provided, that, such audit occurs no more frequently than once every six (6) months and is conducted so as not to unreasonably interfere with normal business activities. The University will provide, at its expense, staff with sufficient knowledge in the University's accounting and other applicable system and procedures to explain to Colloquy, at an in-person meetings or via electronic communications, the reports required under Section 3.4, and the various controls in place to ensure accuracy thereof. Furthermore, Colloquy and/or its representative may observe the University's staff administering tuition and enrollments and producing such reports, and may audit the information, books and records relating thereto. In the event the audit reveals a

discrepancy between University's payments to Colloquy and the amount determined by the audit, University agrees to promptly pay to Colloquy the applicable fees that were not previously paid plus interest as determined under this Agreement. In the event that an audit reveals that University overpaid fees, such overpayment shall be promptly credited to the University. If audits repeatedly demonstrate material inaccuracies in connection with Student Instructional Fees or Third Party Fees and the underlying issues associated with such inaccuracies are not corrected by the responsibility Party, such Party shall pay the other Party the costs of subsequent audits until such failures are corrected.

10.9 Severability. If any provision of this Agreement is held to be illegal or unenforceable, such provision will be limited or excluded from this Agreement to the minimum extent required, and the balance of the Agreement will be interpreted as if such provision was so limited or excluded and will be enforceable in accordance with its terms.

10.10 Waivers. All waivers must be in writing and signed by the Party to be charged. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion, and no delay or omission by either Party to exercise any right or power it has under this Agreement will impair or be construed as a waiver of such right or power.

10.11 Entire Agreement: Modifications. This Agreement contains the entire understanding of the Parties regarding its subject matter. No modification, amendment, supplement to, or waiver of this Agreement or any of its provisions or parts will be binding upon the Parties unless made in writing and signed by an authorized representative of the Parties.


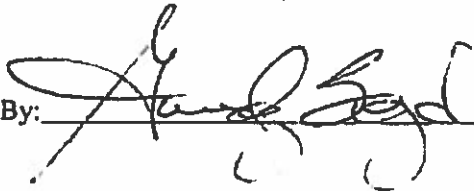
10.12 Rules of Interpretation.

- a) The section headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.
- b) As used in this Agreement, unless otherwise provided to the contrary, (i) all references to days will be deemed references to calendar days, and (ii) any reference to a "Section" or "Schedule" will be deemed to refer to a section or schedule of this Agreement. The Recitals and Schedules to the Agreement are part of the Agreement and are incorporated by reference.
- c) Unless the context otherwise requires, as used in this Agreement, all terms used in the singular will be deemed to refer to the plural as well, and vice versa. The words "hereof," "herein" and "hereunder" and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.
- d) Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation."
- e) References in this Agreement to "\$" will be deemed a reference to United States dollars unless otherwise specified.
- f) Words importing persons include firms, associations, partnership, trusts, corporations and other legal entities, including public bodies, as well as natural persons.
- g) Any contractual terms included in documents exchanged between the Parties, such as invoices, receipts, bills of lading, documents of title or other commercial documents are void and of no effect. Any course of dealing at variance with the terms of this Agreement will not be deemed to amend or waive either Party's right to insist on strict performance in accordance with the terms of the Agreement.

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- 10.13 Survival. Those terms of this Agreement that are, by their nature, meant to survive termination or expiration of this Agreement will so survive, and include those provisions related to warranties and representations, indemnification, confidentiality, and ownership of Intellectual Property Rights.
- 10.14 Attorneys' Fees. In any action brought to enforce this Agreement, each party will bear their own costs.
- 10.15 Covenant of Further Assurances. Colloquy and University covenant and agree that, subsequent to the execution and delivery of this Agreement and without any additional consideration, each of Colloquy and University will execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.
- 10.16 Publicity. Neither Party will, without prior written consent of the other Party, which will not be unreasonably withheld, make any press release, advertising, sales literature, or other publicity or statements relating to the existence or substance of the Agreement or the relationship between the Parties. Notwithstanding the foregoing, Colloquy may identify University as a client of Colloquy, including in Colloquy's marketing materials in press releases, and on Colloquy's website. University will include on its website a conspicuous link to Colloquy's website (the URL for which Colloquy will provide to University) encouraging users to click for information on distance learning programs.
- 10.17 Acknowledgment. The Parties each acknowledge that the terms and conditions of the Agreement are the subject of active and complete negotiations, and that such terms and conditions should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in drafting the Agreement.
- 10.18 Solicitation of Personnel. Each Party covenants and agrees that, during the Term and for a period of six (6) months following the Term, it will not directly or indirectly hire for employment any personnel of the other Party directly associated with the performance of services under this Agreement. This section will not apply to general solicitations through the use of advertising recruiters or otherwise. The Parties agree to inform their personnel associated with performance under this Agreement of the terms of this section.

Each of the Parties has caused this Agreement to be signed and delivered by its duly authorized representative.

<p>Kaplan Global Solutions, LLC d/b/a Colloquy</p> <p>By: _____ By: <u></u></p> <p>Name: <u>AMJED SAFFARINI</u></p> <p>Title: <u>PRESIDENT</u></p>	<p>Alabama State University</p> <p>By: _____ By: <u></u></p> <p>Name: <u>Dr. Gwendolyn Boyd</u></p> <p>Title: <u>President</u></p>
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