

THIS AGREEMENT is made between Modern Campus USA Inc., a company with its principal place of business at 330 N Lantana Street, Suite 28, PMB 1014, Camarillo, CA 93010 ("**Modern Campus**"), and MiraCosta College with its principal place of business at 1 Barnard Dr Oceanside, California 92056-3899 ("**Customer**").

Whereas, Customer wishes to engage Modern Campus to license the Software and provide certain services as specifically identified in the Agreement; and

Whereas, Modern Campus is an approved Vendor for Foundation for California Community Colleges pursuant to the CollegeBuys Master Services Agreement No. 00008065 ("CollegeBuys Agreement") and Customer wishes to participate in the CollegeBuys Agreement by entering to this Agreement with Modern Campus.

This agreement consists of this signature page and the following appendixes and exhibits (collectively the "**Agreement**"):

- Appendix 1 - Term, Software, Service, Fees
- Appendix 2 - General Terms and Conditions
- Exhibit A - Support
- Exhibit B - Software Hosting
- Exhibit C - 3rd Party Hosting
- Exhibit D - Software Description

Capitalized terms not otherwise defined in the body of the Agreement, shall have the meaning ascribed to them in Section 11 of Appendix 2.

The Fees provided in this Agreement are valid until January 31, 2025.

The effective date of this Agreement is the date of last signature of this Agreement. ("**Effective Date**").

Subject to the payment of the Fees by Customer, Modern Campus shall perform the Services in accordance with the terms hereof.

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties. Except as expressly provided in this Agreement, there are no representations, warranties, conditions, other agreements or acknowledgements, whether direct or collateral, express or implied, that form part of or affect this Agreement.

www.moderncampus.com

CANADA

2482 Yonge Street #1366
Toronto ON Canada M4P 2H5
T. (416) 480-0500 | F. (416) 480-2995

USA

330 N Lantana Street, Suite 28, PMB 1014
Camarillo, CA 93010
T. (805) 484-9400

This Agreement may be executed in any number of counterparts, including facsimile, PDF, and other electronic copies, each of which shall be deemed an original, but all of which taken together shall constitute one single agreement between the Parties.

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be duly executed by an officer authorized in that behalf as of and with effect on the Effective Date.

MiraCosta College

Modern Campus USA Inc.

per: _____

per: _____

Name:

Name:

Title:

Title:

Date:

Date:

per: _____

Name:

Title:

Date:

APPENDIX 1

TERM, SOFTWARE, SERVICE, FEES

1. TERM

- a) License Start Date: The License shall commence on January 1, 2025.
- b) Initial Term: The initial term (the "**Initial Term**") of this Agreement shall commence on the License Start Date and continue for a period of 60 months, unless terminated earlier pursuant to Section 4 of Appendix 2.
- c) Renewal Term: This Agreement shall automatically renew for successive periods of 12 months (each a "**Renewal Term**") unless either Party notifies the other at least ninety (90) Business Days prior to the expiration of the Initial Term or the then Renewal Term of its desire not to renew this Agreement.

2. SOFTWARE SUBSCRIPTION

- a) Subscription: Subject to the terms and conditions of this Agreement, including the Appendices identified on the signature page, Customer shall be entitled to use the following Software modules as defined in Exhibit D in accordance with the license set out in Appendix 2 to this Agreement and any specific licensing restrictions as listed below (the "**Use Rights**"):
 - CMS - SaaS with unlimited users
 - DataBank Hostings
- b) Add-On Subscription: Customer may make additional purchases from time to time through this agreement by ordering the applicable Software as per the then current Pricing Schedule.

3. Intentionally Omitted.

4. SUPPORT PACKAGE

- a) Scope: Customer is provided the support and maintenance services as described in Exhibit A.

5. FEES AND PAYMENT TERMS

- a) Currency: The Fees listed below are in U.S. dollars (USD) and are exclusive of any applicable taxes.
- b) Subscription Fees:
 - i) Description: The Subscription Fees are for the use of the Software set out in Section 2 of this Appendix commencing on the Effective Date.
 - ii) Fees: The Subscription Fee for use of the Software is calculated at a rate indicated below and may be subject to change at the completion of the Initial Term or any Renewal Term.
 - Subscription Fee:
 - CMS - SaaS with unlimited users: \$35,000.00
 - DataBank Hosting: \$8,000.00

Total Subscription Fees Year 1: \$43,000.00 USD

- Renewal Fee: The following additional fee is due each year:
 - An increase of 5%

iii) Payment Terms: The Subscription Fee and Renewal Fee are payable annually in advance, with payment due Net 30 days from invoice date. Late Payments will be subject to a late fee calculated at 0.5% per month. If payment of Subscription Fees with annual recurring costs is not received prior to the start date of the Renewal Term, Modern Campus reserves the right to suspend access to the Software until payment is received.

c) Intentionally Omitted.

d) Support Fees:

i) Description: The Support Fees are for the support and maintenance services as set out in Section 4 of this Appendix commencing on the Effective Date.

ii) Fees:

- CMS - Support - SaaS: \$8,500.00 USD/ year

The Support Fees shall be subject to a five percent (5%) increase per annum.

iii) Payment Terms: The Support Fee is payable annually in advance, with payment due Net 30 days from invoice date. Late Payments will be subject to a late fee calculated at 0.5% per month. If payment of Support Fee is not received prior to the start date of the Initial Term or Renewal Term, Modern Campus reserves the right to suspend access to the Software until payment is received.

e) Taxes: Customer shall, in addition to the other amounts payable under this Agreement, pay all sales, use, value added, excise or other taxes, federal, provincial, state or otherwise, however designated, which are levied or imposed on the transactions contemplated by this Agreement and each Order Form, except for any taxes based on Modern Campus' net income. If customer is exempt from taxes, Customer shall provide a Certificate of Tax-exempt status.

Grand Total (Subscription, Service, and Support Fees) for Year One

Total Year One Subscription: \$43,000.00

Total Year One Support: \$8,500.00

Total Year 1 Fees: \$51,500.00

Total Year 2 Fees: \$54,075.00

Total Year 3 Fees: \$56,778.75

Total Year 4 Fees: \$59,617.69

Total Year 5 Fees: \$62,598.57

APPENDIX 2

GENERAL TERMS AND CONDITIONS

1. THE SYSTEM

- (a) Provision and Access to the System: Modern Campus shall operate and maintain the System in accordance with Exhibit B of this Agreement. Access to the System is through a secure connection over the public Internet. Customer acknowledges and agrees that Modern Campus is not responsible or liable for any communication over the public Internet or any failure to deliver communication to and from the System on a timely basis.
- (b) Required and Infrastructure Changes: From time to time, it will be necessary for Modern Campus to perform maintenance on the System. Such maintenance includes routine maintenance to ensure the continued provision of the Services through the continued operation of the System or upgrading, updating or enhancing the System. Modern Campus shall use its commercially reasonable efforts to perform such maintenance at such times to minimize the impact of any downtime of the System to Customer. Modern Campus may, at any time, with or without notice to Customer, (unless notice is required otherwise in this Agreement): (i) make changes that are necessary to comply with applicable safety, security or other statutory requirements or orders from applicable governmental authorities; (ii) supplement or make changes to its user documentation and to its rules of operations, access procedures, security and privacy procedures and policies; and (iii) change the components, type and location of the System; provided that any such changes do not impair the provision of the Services.
- (c) Software Revisions: Modern Campus reserves the right to modify, revise, upgrade, replace, or reconfigure the Software features and functions at any time, provided that for those revisions that will materially affect System functionality Modern Campus will give Customer at least ninety (90) calendar days' advance notice of such revision. Occasionally, these changes may require Customer to adapt integration files, or otherwise update data in the Software.
- (d) Modern Campus' Ownership: Customer acknowledges and agrees that Modern Campus owns all worldwide rights, titles and interests, including all intellectual property rights, in and to: (i) the System; (ii) Software; (iii) User Documentation; and (iv) any modifications, enhancements, upgrades, updates or customization to any of the foregoing. Customer does not acquire any rights, title or ownership interests of any kind whatsoever, express or implied, in any of the foregoing other than the licenses granted herein.

2. USE OF SERVICES

- (a) Grant by Modern Campus: For the duration of the Term, Modern Campus grants to Customer a non-exclusive, non-transferable, revocable right, for Customer's internal business purposes to access the System in accordance with the security protocols as set out herein for the purpose of:
 - (i) using the Software identified in Appendix 1 or the Order Form, as applicable, subject to the Use Rights associated with such Software;
 - (ii) viewing and displaying the User Documentation; and
 - (iii) uploading, processing, viewing, displaying, using and downloading Customer Data to and from the System.

- (b) Authorized Users: Customer shall be responsible and liable for the actions and omissions of each Authorized User and their compliance with the provisions of this Agreement.
- (c) Support: Modern Campus shall provide support to Customer and its Authorized Users in accordance with the provisions set out in Exhibit A to this Agreement.
- (d) Reservation of Rights: Any rights not granted herein are strictly reserved by Modern Campus. Customer shall not (i) permit any Person other than Authorized Users to use the System; (ii) process or permit to be processed any data other than Customer Data; and (iii) itself or permit others to, reverse engineer, decompile, disassemble or translate the Software or any other software used by Modern Campus to deliver the Services, or otherwise attempt to view, display or print such software, including but not limited to the Software's, source code. Modern Campus may monitor Customer's use of the System and Software, including compiling reports evidencing Customer's usage thereof, gather statistics, track aggregated data, and satisfy any support requirements, provided such monitoring does not unreasonably interfere with Customer's use of the System.
- (e) Prohibited Activities: Customer shall not:
 - (i) use the Services for improper or unlawful purposes or in contravention of Customer's own policies and regulatory requirements;
 - (ii) include, or knowingly allow others to include, any Objectionable Content or introduce Viruses to the System and shall institute such security procedures and safeguards as Customer deems necessary to prevent the posting, uploading or inclusion of any Objectionable Content or Viruses to the System;
 - (iii) intercept or attempt to intercept any messages transmitted to and from the System that are not intended for Customer or any of its Authorized Users;
 - (iv) take any action that may damage, disable, overburden, or impair the System or attempt to circumvent, disable, damage or impair the System's security features;
 - (v) remove any copyright or other proprietary rights notice on the Software or the User Documentation or any copies thereof;
 - (vi) use any robot, spider or other automatic device or manual process to monitor or copy portions of the System;
 - (vii) perform any vulnerability scanning or penetration testing on the System or Software without Modern Campus' explicit prior written consent for each such scan or test; and
 - (viii) reproduce, duplicate, copy, sell, trade, repurpose, resell, or utilize, the Software and/or Services or any portion thereof, for any commercial purposes not contemplated under this Agreement. The rights granted in this Agreement, are intended for the use of the Customer and its Authorized Users, and shall not be transferred, assigned, or sublicensed, temporarily or permanently, to any other person or third party.
- (f) Viruses: If Modern Campus, in its absolute discretion, forms the view that any Customer Data or any other information or files uploaded by Customer or any of its Authorized Users contains or includes a Virus, Modern Campus may remove such Customer Data, information or file from the System and take such other action as Modern Campus deems necessary to protect the integrity and operation of the Services, System and the Software. Any costs associated with such removal may be charged by Modern Campus to Customer. Modern Campus shall notify Customer of its actions under this Section as soon as reasonably possible. In the event that Modern Campus removes such Customer Data, information or file from the System and it was determined that such Customer Data, information or file did not contain

or include a Virus, Customer shall be provided service credits in accordance with Exhibit B of this Agreement for the period in which Customer was unable to use its Customer Data or access the System.

3. SECURITY AND CUSTOMER DATA

- (a) Security: Modern Campus agrees to protect the privacy and security of Customer Data according to all applicable laws and regulations, by commercially-acceptable standards, and no less rigorously than it protects its own confidential information, but in no case less than reasonable care. Modern Campus shall implement and maintain reasonable safeguards and controls to deter and for the detection, prevention and correction of any unauthorized intrusion, access or use of the System.
- (b) PCI Compliance: For Modern Campus applications incorporating credit card processing, Modern Campus represents that, as of the Effective Date, it retains appropriate PCI-DSS certification and will provide periodic notification of ongoing certification renewals.
- (c) Authentication IDs: Customer shall control and maintain the security of all Authentication IDs. Customer shall be solely responsible for all instructions, commitments and other actions or communications taken under any of its Authentication IDs. Customer shall promptly report to Modern Campus any errors or irregularities in the Service or the System or any unauthorized use of any part thereof and inform Modern Campus immediately if any Authentication ID becomes known to any third person who is not authorized to possess such password. Customer hereby indemnifies and holds harmless Modern Campus from any actions, claims, suits, proceeding or damages made against Modern Campus from a third person as a result of any use of Customer's Authentication IDs, whether or not such use is authorized by Customer, unless the Customer's Authentication IDs were obtained by the third party as a result of Modern Campus' willful action.
- (d) Customer Data: Customer acknowledges and agrees that Modern Campus: (i) will not be responsible for the accuracy, completeness or adequacy of any Customer Data or the results generated from any Customer Data uploaded to the System and processed by the Software; and (ii) does not purport to monitor Customer Data.
- (e) Customer's Ownership: Modern Campus acknowledges and agrees that all worldwide right, title and interest including, all intellectual property rights in and to the Customer Data shall be the exclusive property of Customer. Modern Campus does not acquire any rights, title or ownership interest of any kind whatsoever, express or implied, in any of the Customer Data, other than the license granted herein. Modern Campus shall not be held responsible for accessibility-related issues concerning Customer website. While Modern Campus may provide accessibility tools within the Software, it is the responsibility of the Customer to use these tools to identify and correct accessibility issues with Customer website.
- (f) Compliance with Privacy Laws: Modern Campus will comply with applicable privacy laws, including the Family Educational Rights and Privacy Act ("**FERPA**") and the Health Insurance Portability and Accountability Act ("**HIPAA**") and the data security standards set out therein regarding personally identifiable information contained within Customer Data. To the extent that Modern Campus has access to "Education Records", it is deemed a "school official" as a provider of an outsourced institutional service as each of these terms is defined in FERPA.

- (g) Data Breach: Modern Campus has implemented and shall maintain a program for managing unauthorized disclosure or exposure of Customer Data stored by or accessible through the Services (“**Data Breaches**”). Both Customer and Modern Campus shall take reasonable steps to prevent unauthorized access to the System. Each party shall notify the other immediately (within 24 hours) of any known or suspected unauthorized use of the System or breach of its security and shall use best efforts to stop said Data Breach.
- (h) Use of Customer Data: Modern Campus may use Customer Data for the sole purposes of: (i) providing the Services to Customer; and (ii) on an aggregated and anonymous basis for System analytics and improvement. Modern Campus may disclose Customer Data only as required by applicable law or by proper legal or governmental authority. Modern Campus shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer’s expense.

4. SUSPENSION AND TERMINATION

- (a) Suspension of Services: Modern Campus may suspend Customer's and each of its Authorized Users' right to receive the Services and access and use of the Software if, in consultation with Customer, it has been determined that a Customer Authorized user, or other party has undermined or attempted to undermine, the security or integrity of the System.
- (b) Customer’s Right of Termination for Breach by Modern Campus: Subject to Section 4(d) and 4(e) of this Appendix, Customer may terminate this Agreement and the rights granted hereunder, if Modern Campus breaches any material provision of this Agreement and such breach is not cured within thirty (30) Calendar Days after delivery of a written notice by Customer requiring Modern Campus to correct such failure.
- (c) Modern Campus’ Right of Termination for Breach by Customer: Subject to Sections 4(d) and 4(e) of this Appendix. Modern Campus may terminate this Agreement and the rights granted hereunder without prejudice to enforcement of any other legal right or remedy, immediately upon giving written notice of such termination if Customer:
 - (i) fails to pay in full any Fees owing by it under this Agreement by the due date thereof or breaches any other material provision of this Agreement and such failure or breach is not cured within fifteen (15) Calendar Days for non-payment or thirty (30) Calendar Days for other breach, after delivery of a written notice by Modern Campus requiring Customer to correct such failure or breach; or
 - (ii) infringes the intellectual property rights of Modern Campus.
- (d) Effect of Termination: Upon the termination of this Agreement for any reason:
 - (i) Modern Campus shall submit to Customer any Customer Data contained in the System in the form of an encrypted file within ten (10) Business Days of receipt of written request by Customer.
 - (ii) Customer shall immediately discontinue use of the System, Software and User Documentation and Modern Campus shall discontinue the provision of the Services;
 - (iii) Customer shall pay to Modern Campus the full amount of all Fees payable hereunder outstanding as of the effective date of termination, if any, whether invoiced or not and any other monies owing to Modern Campus; and
 - (iv) within fifteen (15) Business Days from the effective date of termination and subject to Modern Campus’ back-up policies, each Party will return to the other Party, or confirm destruction, of all Confidential Information of the other Party which is then in its possession or control.

- (e) Survival of Covenants: Notwithstanding the termination or expiration of this Agreement for any reason, the covenants set out in this Section 4(e) and in Sections 1(d), 3(e), 4(d), 5, 6(c), 7, 9, 10(a), 10(c) and 11 of this Appendix shall survive any such termination or expiration.

5. CONFIDENTIAL INFORMATION

Each Party acknowledges that Confidential Information consists of confidential and proprietary information. Except as required by law, each Party shall, and shall cause its employees, agents and contractors to hold Confidential Information of the other Party in confidence, and shall use the same degree of care by instruction, agreement or otherwise, to maintain the confidentiality of the other Party's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but with at least a reasonable degree of care. Each Party agrees not to make use of Confidential Information other than for the exercise of rights or the performance of obligations under this Agreement, and not to release, disclose, communicate it or make it available to any third party other than employees, agents and contractors of the Party who reasonably need to know it in connection with the exercise of rights or the performance of obligations under this Agreement. In the event that any Party receives a request to disclose all or any part of the Confidential Information under the terms of a valid and effective subpoena under the California Public Records Act or similar statute, or order issued by a court of competent jurisdiction or by a governmental body, such Party agrees, to the extent permitted by applicable law, to (i) immediately notify the other Party of the existence, terms and circumstances surrounding such a request; (ii) consult with the other Party on the advisability of taking legally available steps to resist or narrow such request; and (iii) if disclosure of such information is required, permit the other Party to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the disclosed information as the other Party designates.

6. WARRANTIES

- (a) Software Warranties: Modern Campus hereby warrants to Customer that during the Term the Software will substantially operate in accordance with, and have the functions set out in, the User Documentation.
- (b) Remedy: For any breach of the above warranty, Customer's exclusive remedy and Modern Campus' entire liability and sole obligation is to correct the defects in the Software that caused the breach of the above warranty in accordance with the terms set out in Exhibit A to this Agreement. Notwithstanding anything to the contrary, breach of the above warranty shall be a ground for termination and Customer may exercise its right to terminate the Agreement for cause under Section 4(b) of this Appendix.
- (c) Exclusion of Other Warranties: EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS IN RELATION TO THE SERVICES, SYSTEM, SOFTWARE OR USER DOCUMENTATION THAT ARE THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR THAT THE SERVICES, SYSTEM OR SOFTWARE WILL MEET CUSTOMER'S NEEDS OR WILL BE AVAILABLE FOR USE AT ANY PARTICULAR TIME OR WILL BE ERROR FREE.

7. INDEMNIFICATION

- (a) Modern Campus' Indemnity: Modern Campus shall defend at its own expense any claim, proceeding or suit brought against Customer, its affiliates, directors, officers, employees and agents, by a third person (referred to as a "Claim") to the extent such Claim alleges that the Software furnished hereunder

infringes any U.S. or Canadian copyright, valid registered patent or trademark of a third person, and will indemnify and pay all damages which by final judgment or settlement may be assessed against Customer on account of such Claim, provided that:

- (i) prompt written notice of the Claim or of any allegations or circumstances known to Customer which could result in a Claim is provided to Modern Campus;
- (ii) reasonable information and assistance are received from Customer, at Modern Campus' expense, which Modern Campus may require to defend the Claim;
- (iii) Modern Campus is given sole control of the defense of the Claim, and all negotiations for its settlement or compromise thereof; and
- (iv) the alleged infringement does not result from any non-permitted uses, alterations, modifications or enhancements carried out by Customer or on its behalf by a third person.

If such Claim has occurred, or in Modern Campus' opinion is likely to occur, Customer agrees to permit Modern Campus, at Modern Campus' option and expense, either to procure for Customer the right to continue using the Service, including the System and Software, or to replace or modify the Software so that it becomes non-infringing without substantial loss of functionality, or if none of the foregoing alternatives is reasonably available and at Modern Campus' discretion, require the Customer to discontinue use of the Services, including the System and Software and Modern Campus shall issue a refund to Customer for the remaining pro-rata portion of any pre-payments corresponding to the current Term Subscription Fees. The foregoing states the entire obligations and liabilities of Modern Campus with respect to any infringement of intellectual property rights of any third person.

8. INSURANCE

Modern Campus shall maintain, at Modern Campus' sole expense, the following insurance coverages and limits:

- (i) Commercial General Liability Insurance with limits of liability not less than \$3,500,000 USD per occurrence and in the aggregate, including liability coverage for bodily injury or property damage;
- (ii) Professional Liability insurance including Errors and Omissions Insurance with limits of liability not less than \$3,500,000 USD per occurrence and in the aggregate; and
- (iii) Cyber Liability insurance with limits of liability not less than \$3,500,000 USD per occurrence and in the aggregate.

Modern Campus' insurance shall be primary, and any applicable insurance maintained by Customer shall be excess and non-contributing.

9. LIMITATION OF LIABILITY

- (a) Consequential Damages: IN NO EVENT SHALL EITHER PARTY, OR ANY OF ITS EMPLOYEES, DIRECTORS, OFFICERS, OR AGENTS, BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES OR FOR ANY LOST REVENUE, LOST PROFITS, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS.
- (b) Limitation of Direct Damages: SUBJECT TO SECTION 9(c) OF THIS APPENDIX, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY CUSTOMER AGAINST MODERN CAMPUS OR ANY OF ITS EMPLOYEES, DIRECTORS, OFFICERS, OR AGENTS WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, INCLUDING A BREACH BY MODERN CAMPUS OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT (WHETHER OR NOT A FUNDAMENTAL BREACH), OR DAMAGES RESULTING FROM MODERN CAMPUS' NEGLIGENCE, CUSTOMER'S EXCLUSIVE REMEDY SHALL BE TO RECEIVE FROM MODERN CAMPUS

PAYMENT FOR ACTUAL AND DIRECT DAMAGES TO A MAXIMUM AGGREGATE AMOUNT EQUAL TO TWO TIMES THE AMOUNT PAID BY CUSTOMER TO MODERN CAMPUS IN THE TWELVE (12) MONTHS PRECEDING THE EVENT THAT CAUSED THE CLAIM, DEMAND OR ACTION UNDER THE CATEGORY OF SUBSCRIPTION FEES.

- (c) Exception: NOTWITHSTANDING SECTION 9(b) ABOVE, THE LIMITATION SET OUT THEREIN SHALL NOT APPLY TO ANY DATA BREACH CAUSED BY MODERN CAMPUS' NEGLIGENCE OR WILLFUL MISCONDUCT, IN WHICH CASE CUSTOMER'S EXCLUSIVE REMEDY SHALL BE TO RECEIVE FROM MODERN CAMPUS PAYMENT FOR ACTUAL AND DIRECT DAMAGES TO A MAXIMUM AGGREGATE AMOUNT EQUAL TO FIVE MILLION DOLLARS (\$ USD 5,000,000).

10. MISCELLANEOUS

- (a) Governing Law: This Agreement shall be governed by, and construed and enforced in accordance with, the laws in force in the state of California. The Parties hereto agree to submit to the jurisdiction of the courts of the state of California and waive any objection relating to improper venue or forum non conveniens to the conduct of any proceeding in any such court.
- (b) Modifications: This Agreement may be modified only upon written agreement by the Parties hereto.
- (c) Severability: In the event that any provision (or any portion of a provision) of this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision (or portion of a provision) had never been contained herein in regards to that particular jurisdiction.
- (d) Assignment: Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either Party in whole or in part without the prior written consent of the other Party, except that either Party may assign this Agreement with all of its obligations and rights to an Affiliate or to an entity which acquires all or substantially all of the assets and business of the Party by merger, sale of assets, sale of stock, operation of law or otherwise provided that the Party acquired provides reasonable notice to the other Party.
- (e) No Agency: Nothing herein shall be deemed to constitute either Party as an agent, representative or employee of the other Party, or both Parties as joint venturers or partners for any purpose. Each Party shall act solely as an independent contractor and shall not be responsible for the acts or omissions of the other Party. Neither Party will have the authority or right to represent nor obligate the other Party in any way.
- (f) Modern Campus and Lifelong Learning Extended Education Brand Protection: The logo "Powered by Modern Campus", or "Powered by Lifelong Learning Extended Education" with embedded link to Modern Campus website, will appear in appropriate visible locations within the Software including Login pages.
- (g) Customer List: Modern Campus is permitted to list the Customer's logo and name in marketing materials including within a customer list composed of other Modern Campus customers.

- (h) Force Majeure: No delay, failure, or default, other than a failure to pay Fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control provided that written notice of delay (including anticipated duration of the delay) shall be given by the affected Party to the other Party within ten (10) days of the affected Party first becoming aware of such event.
- (i) No Waiver: Neither Party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- (j) Cooperative Purchasing: Customer shall be eligible to purchase any Modern Campus products under the terms of, and be governed by, this Agreement at the then rate set by Modern Campus. Each such purchase will be reflected on a separate Order Form or Statement of Work, executed specifically for that purchase. Each purchaser shall be responsible for its own purchases and shall be liable only for goods or services ordered and received under the Order Form or Statement of Work to which it is a party.

11. DEFINITIONS

In this Agreement, the following terms shall have the following meanings:

"Affiliate" means any corporation or entity controlling, controlled by or under common control, directly or indirectly with Modern Campus or the Customer, as applicable.

"Authentication ID" means a security mechanism by which an Authorized User identifies herself or himself to the System and gains access thereto, which security mechanism may include user identification, passwords, digital certificates or any other similar process mechanism for authentication and recognition as determined by Modern Campus from time to time.

"Authorized User" means any company or individual, including Customer's employees, agents, clients, consumers, students or instructors, who Customer has authorized to access and use the Services.

"Business Day" means any calendar day except for Saturday or Sunday or any statutory holiday observed in the state of California and in the State of California.

"Change Request" means any document detailing Customer service requests or Software customizations, along with pricing, that requires approval in writing by both parties.

"Confidential Information" means this Agreement; all data and information relating to the business and management of either Party, including Customer Data; the Software, including its design, ideas embodied therein, models and databases; and marketing, financial or personnel data of a Party, provided, however, that Confidential Information shall not include any data or information which:

- (i) is or becomes publicly available through no fault of the Party to whom disclosure is made;
- (ii) is disclosed to a Party by a third party under no obligation of confidentiality to the other Party; or
- (iii) is further disclosed with the prior written consent of the disclosing Party.

“Customer Data” means any data, content, and information in electronic form input or collected through the System by or from Customer, including without limitation by Customer’s clients.

“Customer’s Point of Contact” has the meaning ascribed to it in Section 2(c)(i) of Exhibit A.

“Fees” means collectively the Service Fees, Subscription Fees, and any Other Fees, where “Service Fees”, “Subscription Fees”, and any “Other Fees” are set out in Appendix 1 to this Agreement or the Order Form, as applicable.

“Hours of Support” means between the hours of 9:00 a.m. and 8 p.m. Eastern Time (standard or daylight, as the case may be) on Business Days. Hours of support for Severity 1 issues (out of service) are 24 hours a day, 7 days per week.

“Objectionable Content” means content that infringes any applicable laws, regulations or third person’s rights, and content which is in breach of any person’s intellectual property rights.

“Person” means any individual, estate, sole proprietorship, firm, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, limited liability company, corporation, body corporate, trustee, trust, governmental authority or other entity or organization and includes any successor to any of the foregoing.

“Resolution” has the meaning ascribed to it in Section 1(f)(iv) of Exhibit A.

“Revenue” is defined as all revenues, net of discounts and refunds, that Customer charges, bills, invoices, or receives through the direct or indirect usage of the Software and may include, but is not limited to tuition fees, event or add-on fees, special requests, administrative fees, supplementary fees, other purchases through any use of the Software whatsoever, and includes indirect Revenue received in another system as a result of the purchased program, course, or other item being marketed through Modern Campus.

“Service” means collectively the services to be provided by Modern Campus to Customer as described and set out in this Agreement.

“SLA” – means Modern Campus’ standard service level agreement as defined in Exhibit B.

“Software” means the software, modules, tools, and other features provisioned and made available to Customer set out in Appendix 1 to this Agreement or the Order Form, as applicable.

“Statement of Work (SOW)” is a document detailing Customer service requests or Software customizations that contains schedule, roles and responsibilities, and other project-based information and requires approval in writing by both parties.

“System” means collectively: (i) the Software; and (ii) the computer server that houses the Software and those devices and peripherals physically located with such server located behind Modern Campus’ border router, which is used to establish connectivity from the System to the public Internet.

“Term” means collectively the Initial Term and any Renewal Term; where the “Initial Term” and any “Renewal Term” are set out and defined in Appendix 1 to this Agreement.

"User Documentation" means online help and any additional materials published by Modern Campus with respect to System functionality.

"Use Rights" means the parameters by which Customer may use the Software set out in Appendix 1 to this Agreement or the Order Form, as applicable.

"Virus" means a piece of code usually (but not necessarily) disguised as something else that causes some unexpected and, for the victim, usually undesirable, event and which is designed so that it may automatically spread to other computer users; the term 'Virus' will also be deemed to include worms, cancelbots, trojan horses, harmful contaminants (whether self-replicating or not) and nuisance causing or otherwise harmful applets.

Exhibit A

SUPPORT

1. SCOPE

- (a) Generally: Modern Campus shall provide the Support Services in accordance with the provisions of this Exhibit.
- (b) Provision of Updates: From time to time, Modern Campus shall deploy updates to the Software as and when developed by Modern Campus. Modern Campus reserves the right to update any production hosted environment, in collaboration with the Customer, within 30 days of the availability of the Software update.
- (c) Exclusions: Modern Campus' obligations hereunder do not include maintenance services on any third-party software, or monitoring or otherwise managing customer's on-premise computing environments. Under no circumstances do Modern Campus' obligations under the SLA include, without a separate services engagement, any onsite support services, or training.
- (d) Description of Support: Subject to Customer providing First Level Support and performing its other obligations as described herein, Modern Campus shall provide support through its online support portal during the Hours of Support. Support shall consist of:
 - a. Verifying and/or confirming the Severity Level of Customer's query; and
 - b. Providing Customer with any readily available Resolution, which may be a temporary Resolution until a permanent Resolution can be developed, or a work around to rectify an Error.
- (e) Severity Level Classifications: Modern Campus' help desk and Customer's Point of Contact will reach agreement on the severity of each issue according to the severity classifications contained in this Section. If agreement cannot be reached, the issue will be escalated to a representative of Modern Campus' and Customer's management to reach agreement. Modern Campus will use commercially reasonable means to address the issue within the specified timeframes contained herein depending on the severity level.

Severity 1

A problem fits the classification of Severity 1 when any one of the criteria shown below is met.

- o No access to the Software's core functionality for all Customer end users due to Software.
- o Severely limited ability to use major functionality of the Software AND there is an imminent mission-critical business deadline and/or significant business impact for all Customer users.

Severity 2

A problem fits the classification of Severity 2 when any one of the criteria shown below is met.

- o Limited ability to use a major feature or functionality of the Software and there is no reasonable Workaround.
- o Complete inability to use the Software for a small or non-significant portion of Customer's organization.

Severity 3

Severity 3 is the default severity of new tickets unless specific criteria for Severity 1 or Severity 2 can be demonstrated. A problem fits the classification of Severity 3 when any one of the criteria shown below is met.

- o Loss of Software functionality to an individual user or group with minor overall business impact.
 - o Identified errors that require final resolution in software but whereby a suitable workaround has been provided.
 - o Minor cosmetic or functional errors that do not stop users from performing required task
- (f) Response Times and Resolution:
- (i) For any problems that are outside of the scope of Customer's First Level of Support, Customer's Point of Contact shall contact Modern Campus' online support portal.
 - (ii) Any issues left from the Customer Point of Contact to the Modern Campus online support portal will be responded to through the creation of a trouble ticket according to the following Response Times only during Hours of Support from the time the message was left:
 - Severity 1: 1 hour
 - Severity 2: 4 hours
 - Severity 3: Next business day
 - (iii) Modern Campus shall attend to each of Customer's reported Incidents based upon Severity Level, and, for Incidents of the same Severity Level, based upon the date and time of receipt of the reported Incident unless otherwise directed.
 - (iv) "Resolution" means any action, software, script, workaround or other means to enable the Software to run as per the User Documentation.
 - (iv) Targeted time for Resolution of problems from start of Resolution efforts are shown below.
 - Severity 1: 4 hours
 - Severity 2: 8 hours only during the Hours of Support
 - Severity 3: to be considered for correction in the next fix pack, or product release
 - (v) Modern Campus does not warrant that, in all circumstances, it will be able to provide a Resolution in the time frames specified. Customer shall co-operate promptly with Modern Campus in the investigation, diagnosis, and Resolution of incidents. If Modern Campus anticipates that the expected resolution time will not be met then a revised resolution time will be communicated to Customer's Point of Contact before the expected resolution time expires.

2. CUSTOMER'S OBLIGATIONS

- (a) Customer's Help Desk: Customer shall establish and maintain a help desk to provide First Level Support for Customer's users of the Software. Each individual on the Customer's help desk must be knowledgeable with respect to the use and operation of the Software and have the ability to diagnose the source of the problem. For greater certainty, such diagnostic ability means the ability to determine whether the problem relates to hardware, network, third party software or an issue with the Modern Campus Software.
- (b) First Level Support: Customer shall provide to its users and perform First Level Support prior to contacting Modern Campus regarding any issues. The First Level Support consists of the following requirements:
 - o Customer end user support regarding the use and operation of the Software;

- o Resolution of Customer internal tickets that represent Software that is working as designed according to documentation, training, or help materials;
- o User identification and password maintenance;
- o Customer equipment support;
- o Maintenance of Customer internal network;
- o Problem detection and escalation to Modern Campus' help desk;
- o Customer internal problem ticket management (Open/Notification, Documentation/Logging, Follow-ups, Reporting) and
- o Problem diagnosis and resolution in conjunction with Modern Campus' help desk.

Customer will perform an analysis of the problem identified by its users and resolve those problems within its scope of responsibility. If the problem is within the scope of Modern Campus' responsibility then Customer shall escalate the problem to Modern Campus' help desk by contacting Modern Campus' help desk.

(c) Contacting Modern Campus:

- (i) The Customer will provide a single point of contact to the Modern Campus Help Desk and two (2) alternatives (collectively referred to as the "Customer's Point of Contact").
- (ii) Only those individuals designated by Customer as Customer's Point of Contact may contact Modern Campus' help desk to resolve problems regarding the use of the Software that Customer's help desk cannot otherwise resolve. Modern Campus shall not be obligated and may not respond to any users or from any employees of Customer other than the Customer's Point of Contacts or, at the discretion of Modern Campus, employees on Customer's help desk.
- (iii) Customer shall not contact Modern Campus for any issues that are to be resolved by Customer under "First Level Support". In the event that Customer contacts Modern Campus' help desk with "First Level Support" issues, Modern Campus shall notify Customer of the improper use of Modern Campus' help desk. If the situation persists after receipt by Customer of such notice then, if mutually agreed upon, Modern Campus may charge Customer additional fees based on time for handling such "First Level Support" issues. Notwithstanding the preceding, and at any time, Modern Campus may refuse to respond or process any issues classified as "First Level Support".
- (iv) Modern Campus will provide Customer with complete contact information for the Modern Campus Help Desk and will notify the Customer single point of contact at least 24 hours in advance of changes in the contact information.

Exhibit B

SOFTWARE HOSTING

- (a) Description of Application Hosting: Modern Campus will provide application hosting services for the Customer as described herein, on the intended environment defined by Modern Campus, and those ongoing activities required to make the Software and Services available to the Customer on an ongoing basis.
- (b) Service Levels: Modern Campus will maintain 99.95% availability for Customer on a monthly basis. Availability as defined by the ability for authorized users to access and/or login to the application as well as ability for regular use of the Software and Services (excluding downtime due to required services outside of Software or Modern Campus control such as identity management integration, credit card merchant service availability etc.). Scheduled routine maintenance, critical maintenance, denial of service attacks or any force majeure event or a series of related force majeure events, which are outside the reasonable control of Modern Campus for affecting normal availability, will not be included in availability calculations. For purposes of this section force majeure events shall include, but are not limited to outages by Modern Campus' subprocessors. Routine maintenance is defined as general enhancement to the application. Critical maintenance is defined as updates requiring immediate application to ensure security or stability in response to potential environmental threats.

Under no circumstances will availability calculations include any downtime that can be identified as resulting from Customer network, Customer computers, or other similar reasons outside of Modern Campus' control.

Routine maintenance is scheduled at such times to minimize the impact of any downtime of the System to Customer.

In the event that, during the Initial Term or Renewal Term, the Application Hosting fails to meet the availability commitment set out for the Application Availability, then Modern Campus shall issue service credits calculated in accordance with the following to the Customer for that particular month, such service credits to be deducted by Modern Campus from future Charges.

$$\text{Service Credit} = (3 \times (\text{Up-Time Target Percentage} - \text{Actual Up-Time Percentage})) * (\text{Annual Subscription Fee} / 12 \text{ months})$$

- (c) Service Level Monitoring: Modern Campus will utilize appropriate measurement and monitoring tools and procedures necessary to measure its performance of the Support Services and compare such performance to that required by the service levels.
- (d) Redundant Systems: The Software will at all times be maintained on servers and other hardware (the "Primary Hardware") maintained by or on behalf of Modern Campus that will be located in a data center ("Data Center") that employs industry-leading security measures, with regard to both physical security (e.g., restricted access to servers, etc.) and electronic security (e.g., firewalls). Modern Campus will also provide for redundant servers and other hardware ("Redundant Hardware") at such Data Center so that, if the Primary Hardware malfunctions, the Redundant Hardware will host the Software according to the specifications set forth herein.

- (e) Backup: Modern Campus encrypts all database backups at rest and targets a recovery point objective of 1 day (RPO). Database backups are kept for 31 days for Lifelong Learning Extended Education and for all other software/products, database backups are kept for 14 days.
- (f) System Access: Modern Campus does not give Customers direct access to the production database, except through the use of the Software, for security and data protection purposes. Access to Customer data without utilizing the production database can be done through the use of the Archive database subscription option for the Lifelong Learning Extended Education product.
- (g) Disaster Recovery: Modern Campus Software and Services are hosted on a fully redundant infrastructure that ensures operation under normal circumstances with minimal or no downtime in the case of specific, individual component hardware failure. Automated messaging is in place and designed to alert Modern Campus staff of any potential service degradation.

Modern Campus maintains infrastructure and backups (application data and database) in a separate physical location geographically removed from the production installation to provide redundancy in the event to a catastrophic failure of the hosting environment.

A detailed Disaster Recovery Planning Checklist may be developed collaboratively between the Customer and Modern Campus Solutions prior to a production go-live to ensure that roles and responsibilities of both organizations are understood.

Exhibit C

3RD PARTY HOSTING

1. ON-PREMISE HOSTING

Modern Campus staff may be requested by Customer, as indicated in the Agreement, to install or configure software or components on Customer owned equipment (e.g. Customer production web hosting server), and Customer will provide all approvals and authorizations required to carry out such activities in writing.

2. 3RD PARTY WEB HOSTING

If Customer purchases production web server hosting services from Modern Campus, this hosting may be provided by a third-party vendor if indicated in the Agreement. Any inability to connect to 3rd party arranged hosted services due to failures or improperly configured services at a third-party hosting facility (including but not limited to DNS services, VPNs, or Internet transport solutions) shall not be considered as outages of Modern Campus hosted solutions.

Exhibit D

SOFTWARE DESCRIPTION – MODERN CAMPUS CMS

| Software or Module | Description |
|-----------------------------------|---|
| CMS | Modern Campus CMS is the #1 commercially available CMS in Higher Education. Modern Campus CMS was built for, and works exclusively with, colleges and universities. Modern Campus CMS delivers an extensive set of capabilities to meet your website management needs from personalization capabilities that enable you to target specific segments with dynamic content to reach your website engagement goals to low code tools for building new reusable layouts that makes designing new website templates easy, even for the least technical of your staff, to robust reporting tools and dashboards that help you monitor the health of your website, manage user permissions, and understand visitor behavior. |
| CMS Blogs | The optional CMS Blogs module for the CMS provides a built-in, integrated blog solution. Users choose from existing page layouts or provide a set of custom-built blog layouts to be implemented. With appropriate permissions, users will be able to create/update blog posts just as they would on any other page in the CMS. |
| CMS Integrated Calendar | This module allows contributors to create event calendars. Users can add contacts, locations, tags, and attachments, as well as schedule repeating events or multiple-date events. Event information can be published immediately or saved for later publication and can be posted to multiple calendars. Separate event calendars can be made for groups such as Student Life to be portrayed in different webpages. |
| CMS Email Campaign Manager | Create, send, and manage your responsive newsletters, announcements, promotions, and other important marketing campaigns. You will be able to effectively communicate with your target audience through automated emails. Email Campaign Manager allows you to easily create, send, and manage targeted and personalized marketing emails directly within Modern Campus CMS. Some of the features of ECM include analytics and reporting about message preferences and performance, personalized and mobile-friendly templates that are readable on any device that allow you to send out targeted, and personalized email and A/B Testing to find the right message for your target audience. |
| CMS Website Search | Our integrated search tool replaces the cost of other solutions like Google search and more. The module is designed to vastly improve the web search experience for visitors to your site, allowing them to quickly and easily find exactly what they need. CMS Website Search allows you to index all the data you want website visitors to find. Beyond web pages, CMS Website Search can index content from dozens of file formats including PDFs, MS Office documents, SharePoint sites, and even links generated by JavaScript. Indexing occurs as often as preferred, ensuring up-to-date search results every time. |
| CMS Emergency Alerts | When an unforeseen event occurs, quickly create a custom emergency announcement, and prominently display it on your site for everyone to see. Modern Campus CMS Emergency Alerts modules allows administrators to create custom emergency announcements quickly and easily and prominently display them on your website for the public to see. Our Emergency Alerts module allows you to classify your Alerts into three categories: Announcement, Warning, or Emergency. You can choose the styling |

| Software or Module | Description |
|--------------------------------------|--|
| | for your alert and decide where you want it to appear on your website (e.g., home page, all pages, CAS login). |
| CMS Insights | Our Insights module fully integrates with Modern Campus CMS to regularly monitor a website's health for adherence to standards and regulations related to accessibility. CMS Insights performs a thorough analysis of a website and reports on accessibility issues, broken links, misspellings, and search engine optimization suggestions. The tool sends regularly scheduled emails to CMS administrators with an overall site score, along with a link to a detailed report showing recommended actions. Because of its integration with Modern Campus CMS, CMS Insights provides CMS administrators and users the ability to fix problems directly from the report. CMS Insights includes both site-wide and page-specific reporting. Site-wide reports give a comprehensive assessment while page-level reports highlight page-specific areas of concern. CMS Insights can be configured to run as often as daily and scan as many pages as desired on the production server, even those not managed in Modern Campus CMS. |
| Modern Campus Maps | A turnkey and completely customizable map that creates a virtual tour of your campus; offered through Modern Campus Maps. |
| Modern Campus Career Pathways | <p>Job Market Outlook: Display relevant labor market data including salary, job postings and projected growth on your course, program and certificate pages. Help students find critical information without leaving your website and utilize a call-to-action button at the bottom to generate leads or conversions.</p> <p>Career and Program Explorer: Let students search by career title. Allow students to see which institution programs align with specific careers or be able to see their return on investment by using data around cost, completion time and median salary.</p> <p>Persona Guides: Help students find important content by identifying with common personas or objectives that deliver helpful calls to action.</p> |
| CMS Course Catalog | This module manages and publishes your course catalog directly through Modern Campus CMS. Both listings for courses and programs are configured, as is the Catalog's PDF output. CMS Course Catalog supports integrating data from an external source and manual content management. |
| CMS Faculty Directory | Faculty Directory builds and manages a faculty (and staff) profile listing in your Modern Campus CMS site, with the ability to pull data from an external database. |
| Modern Campus Hosting | <p>AWS Shared Hosting with Modern Campus.</p> <ul style="list-style-type: none"> • Scaling based on performance needs including load balancing across multiple availability zones • 50GB base storage. • 6Mbps Network throughput, metered at 95th percentile • DDoS and Web Application Firewall protection through AWS • Managed OS Security Patches • PHP only code support • Designed to integrate with Modern Campus CMS for Public facing websites. |

| Software or Module | Description |
|--------------------|---|
| | <ul style="list-style-type: none"><li data-bbox="639 275 1230 306">• System Management through Modern Campus<li data-bbox="639 310 1243 342">• Hands-off implementation as a managed service |