REPRESENTATIVE AGREEMENT

This Representative Agreement (the “Agreement”) is entered into by Texas A&M University-Kingsville, a member of The Texas A&M University System and an agency of the State of Texas (hereafter referred to as “University”), and [\_\_\_\_\_\_\_], a [\_\_\_\_\_\_] established under the law of [\_\_\_\_\_\_\_\_\_] (hereafter referred to as “Contractor”). University and Contractor are each sometimes referred to as a “Party” and collectively sometimes referred to as the “Parties.”

# Engagement of Contractor

Contractor agrees to collaborate with University’s [\_\_\_\_\_\_\_\_\_\_\_] in identifying and referring interested and qualified international students who wish to pursue a course of undergraduate or graduate study in one or more academic programs offered by the University. This is a non-exclusive agreement and University can appoint other representatives as it chooses in respect of any country or area. Contractor will not recruit and will not be paid for recruiting any student who is eligible to receive U.S. federal financial aid under Title IV of the Higher Education Act of 1965, as amended.  Contractor will only recruit foreign nationals abroad who are not U.S. citizens or U.S. permanent residents. All decisions regarding admission and conditional admission remain with the University.

# Obligations of Contractor

The Contractor must:

1. Promote the University’s academic programs with integrity and accuracy and recruit students in an honest, ethical and responsible manners;
2. Present accurate and truthful information to prospective students about the University’s programs, requirements, fees, services, facilities and/or opportunities;
3. Not suggest to prospective students that they can come to the United States on a student visa with a primary purpose other than full time study;
4. Not make any representations or offer any guarantees to prospective students about the likelihood of acceptance into the University’s academic program, whether they will be granted a student visa, or the likelihood of awards of financial aid or scholarships;
5. Not to accept any fee or payment for the Contractor or on behalf of the University from a prospective student or his/her representative;
6. Not recruit students who are eligible to receive U.S. federal financial aid under Title IV of the Higher Education Act of 1965, as amended;
7. Provide written updates of activities on a regular basis to the Office of International Programs of the University; and
8. Perform the services required by this Agreement in countries/areas from where the University wishes to attract students and at such times as the Contractor shall determine.

# Obligations of University

The University must:

1. Provide the Contractor with sufficient information to enable the Contractor to perform its duties under this Agreement;
2. Provide the Contractor with promotional materials deemed necessary to inform prospective students;
3. Communicate changes to policy and procedures, the academic program and course list, and new and updated promotional materials;
4. Update the Contractor in writing of any changes in fees and services;
5. Duly process all completed applications received but is under no obligation to accept any prospective students referred by the Contractor; and
6. Respond promptly to the Contractor’s questions or requests for information.

# Compensation

In consideration for the services to be performed by the Contractor, the University agrees to pay the Contractor a professional service fee of $[\_\_\_\_\_] per semester for the first two (2) semesters for a total service fee of $[\_\_\_\_\_\_]. This service fee will be paid for each verified student referred by the Contractor who enrolls in the University and who pays his or her student bill in full for two (2) or more semesters not to include the summer term. This service fee is deemed earned when all of the following conditions for each applicable term have been met:

1. The student has enrolled full time for the term for which payment will be made.
2. The student is verified through the Texas Common Application and has designated [\_\_\_\_\_\_\_\_\_\_\_\_\_\_] on the Texas Common Application.
3. None of the exclusions below are applicable.

The Contractor must invoice the University no later than ten (10) calendar days after the final payment deadline of each semester and list the names, dates enrolled, and reference numbers of the students that are placed by the Contractor and who have paid the current semester student bill in full. Payment will be made in accordance with the Texas Prompt Payment Act. Payment will be made via University check mailed to Contractor unless other suitable arrangements are negotiated.

No fee is payable by the University to the Contractor if:

1. a student recruited by the Contractor withdraws from his or her academic program within thirty (30) days after commencement of the academic program;
2. a student recruited by the Contractor is accepted by the University but is not granted a visa;
3. a student recruited by the Contractor is eligible to receive Title IV program funds under the Higher Education Act of 1965, as amended; or
4. A student is not verified through the Texas Common Application (ApplyTexas.org).

# Expenses

The Contractor shall be responsible for all costs and expenses incident to performance of services for the University, including, but not limited to all costs of equipment, all fees, fines, licenses, bonds or taxes required or imposed against the Contractor and all other of the Contractor’s costs of doing business. The University shall not be responsible for expenses incurred by the Contractor in performing services for University, unless there is prior approval by the University.

# Indemnification

The Contractor agrees to hold harmless and indemnify the University, its regents, officers, agents and employees, from any and all liability, loss, damages, costs, or expenses which are sustained, incurred, or required arising out of the actions of the Contractor in the course of performing the work of this Agreement, including breach of any part of this Agreement.

# Independent Contractor Status

It is the express intention of the Parties that the Contractor and its associates be an independent contractor and not an employee, agent, joint venture or partner of the University. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the University and Contractor. Both Parties acknowledge that Contractor is not an employee for state and federal tax purposes.

# University Marks

University marks or identification may not be used in any publication, advertisement or news release without prior written approval of the University in each case. The University shall retain all copyrights, patent rights, trademark rights and other intellectual property rights to promotional and related materials.

# Confidentiality

The Contractor must keep confidential all information provided by the University, other than to the extent disclosure is required for the performance of services to the University in accordance with the terms of this Agreement.

# Codes of Ethics

The Contractor agrees to follow the NAFSA: Association of International Educators *Code of Ethics*\* and NAFSA’s *Guidelines for the Ethical Recruitment of International Students\*\**. \*<http://www.nafsa.org/about.sec/governance_leadership/ethics_standards/nafsa_s_code_of_ethics>

\*\* [www.nafsa.org/publication.sec/documentlibrary.dlib/students\_coming\_to\_the/guidelines\_for\_ethical](http://www.nafsa.org/publication.sec/documentlibrary.dlib/students_coming_to_the/guidelines_for_ethical)

# Term of the Contract

This Agreement will become effective on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and will continue for [\_\_\_] [(\_)]years unless terminated in accordance with the provisions listed in this Agreement. The Agreement may be renewed for additional one-year terms if mutually agreed to by the two Parties, and shall not exceed a total duration of five (5) years including all extensions and renewals.

# Termination of Agreement

## Either Party can terminate this Agreement at any time by giving the other Party thirty (30) days prior written notice.

## The University can terminate this Agreement at any time and with immediate effect by giving notice to the Contractor if the Contractor breaches any provision of this Agreement.

## When the Agreement terminates, the Contractor must:

* Submit all applications and fees from prospective students received up to the termination date; and
* Immediately cease to use any advertising, promotional or other material supplied by the University and return all such material to the University by registered mail.

# Notices

Any notices to be given hereunder by either Party to the other Party may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested to the following:

For the University: For the Contractor:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Either Party may change the address by written notice. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of ten (10) days after mailing; email notices will be deemed communicated as of email receipt.

# Miscellaneous

## Assignment and Subcontracting. Neither this Agreement nor any duties or obligations under this Agreement may be assigned by the Contractor without prior written consent of the University (which can be withheld at its discretion). The Contractor must not subcontract to any person the performance of any of its obligations under this Agreement without the prior written consent of the University (which can be withheld at its discretion).

## Compliance with Laws. Contractor shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations, including, but not limited to, Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990. Furthermore, Contractor will not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability or military service in their administration of policies, programs, activities, and employment.

## Governing Law. This Contract shall be governed and interpreted under the laws of the State of Texas. Venue is in Kleberg County, Texas.

## Dispute Resolution. The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. Contractor shall submit written notice of a claim of breach of a contract under this Chapter to the [\_\_\_\_\_\_\_\_\_] of University, who shall examine Contractor’s claim and any counterclaim and negotiate with Contractor in an effort to resolve the claim.

## Public Information.

(1) Contractor acknowledges that Texas A&M University-Kingsville is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

(2) Upon Texas A&M University-Kingsville’s written request, Contractor will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, Texas Government Code, to Texas A&M University-Kingsville in a non-proprietary format acceptable to Texas A&M University-Kingsville. As used in this provision, “public information” has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which Texas A&M University-Kingsville has a right of access.

(3) Contractor acknowledges that Texas A&M University-Kingsville may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

(4) The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this agreement and the Contractor agrees that the agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

## Force Majeure. Neither Party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably with the control of such Party and which by due diligence it is unable to prevent or overcome.

## Execution and Modification. This Agreement is binding only when signed by both Parties. Any modifications or amendments must be in writing and signed by both Parties.

## Severability. If any of the provisions of this Agreement in the application thereof to any person or circumstance is rendered or declared illegal for any reason, or shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

## Waiver. The failure of any Party to enforce any condition or part of this Agreement at any time shall not be construed as a waiver of that condition or part, nor shall it forfeit any rights to future enforcement thereof.

## Entire Agreement. This Agreement constitutes the entire Agreement between the Parties and supersedes any prior agreement or understanding, written or oral, between the Parties with regard to the subject matter covered by this Agreement.

## Conflict of Interest.By executing this Agreement, Contractor and each person signing on behalf of Contractor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

## Prohibition on Contracts with Companies Boycotting Israel.By executing this Agreement, the Contractor certifies it does not and will not, during the performance of this contract, boycott Israel. Contractor acknowledges this Agreement may be terminated if this certification is inaccurate.

## Certification Regarding Business with Certain Countries and Organizations.Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Contractor certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated if this certification is inaccurate.

## Records Retention. Contractor will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven years after the conclusion of the Agreement.

## Prohibition on Contracts Related to Persons Involved in Human Trafficking. Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

# Access to Agency Data

As of September 1, 2021, all A&M System members must require any vendor that is authorized to access, transmit, use, or store data for the A&M member to meet the security controls the A&M member determines are appropriate. The vendor must also periodically provide the A&M member with evidence that the vendor meets the security controls required in the contract. A&M System members should consult with their IT/security teams to determine the appropriate security controls for each applicable vendor and also include the below provision in the vendor contract:

Pursuant to Section 2054.138, *Texas Government Code*, [CONTRACTING PARTY] shall implement and maintain appropriate administrative, technical, and physical security measures, including without limitation, [the security controls attached hereto as Exhibit \_\_\_\_, as may be amended from time to time] [the security controls available at \_\_\_\_\_\_\_\_\_, as may be amended from time to time] (the “Security Controls”), to safeguard and preserve the confidentiality, integrity, and availability of [MEMBER’s] data. [CONTRACTING PARTY] shall periodically provide [MEMBER] with evidence of its compliance with the Security Controls within thirty (30) days of [MEMBER’s] request.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers and become effective as of the last date set forth below.

**[\_\_\_\_\_\_\_\_\_]** **[\_\_\_\_\_\_\_\_\_\_]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name:

Title: Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_