



We greatly appreciate your interest in partnering with NRCCUA to further the goals of your organization and the mission and purpose of NRCCUA. By signing below, the undersigned Applicant / Member certifies, represents, warrants, acknowledges and agrees:

- that Applicant / Member has read and understands the NRCCUA Mission and Specific Objectives stated above and supports their content;
- that Applicant / Member believes that it qualifies for the Membership Class selected above;
- that Applicant / Member will use NRCCUA's products and services for one or more of the following purposes (please check all that apply):
 - ☐ post-secondary educational programs
 - ☐ educational-related products and services that fall into one of the following categories:
 - ☐ financial planning, student loans and scholarships
 - ☐ enrichment opportunities such as travel programs, camps, extracurricular activities and conferences
 - ☐ curriculum materials, books, internet-based educational programs, educational magazines and low-cost literary products
 - ☐ academic assistance, remedial help and preparation for college-entrance examinations
 - ☐ recognition for high levels of performance
 - ☐ participation in community service
 - ☐ learning about civic responsibilities
 - ☐ employment, career options and the military; and
- that membership in NRCCUA is subject to and governed by, and Applicant / Member agrees to be bound by, the attached Membership Agreement & Data Lab Agreement Terms and Conditions, which are hereby incorporated by reference.

*Signature of Applicant / Member
Authorized Representative*

ROBERT C. BOUNDS
Director, PROCUREMENT SERVICES

28 Jun 2019
Date

Address for Notices (if different from above):
Jennifer Kuehn; j-kuehn@tamu.edu; 979-458-0972

Attn: _____
E-mail: _____
Fax: _____

Accepted and agreed by The National Research Center for College and University Admissions, LLC:

*Signature of NRCCUA Authorized
Representative*

Debbie Thompson-Widmer - VP Sales
Name / Title

6/28/19
Date

Address for Notices:
3651 NE Ralph Powell Road
Lee's Summit, MO 64064
Attn: Amanda Sperry, Regional Director
E-mail: Amanda.sperry@nrccua.org
Fax: 1-888-887-6164

NRCCUA MEMBERSHIP APPLICATION & ENCOURA DATA LAB SUBSCRIPTION AGREEMENT TERMS AND CONDITIONS

1. MEMBERSHIP. These Terms and Conditions (these “*Terms*”) set forth the general terms and conditions governing the membership (“*Membership*”) of the Member or Applicant (“*Member*”) identified on the cover page of the Membership Application & Data Lab Agreement (the “*Membership Agreement*”) in The National Research Center for College and University Admissions, LLC (“*NRCCUA*”) and the provision of products, services or other benefits by NRCCUA to the Member in connection with Membership under any Participation Confirmation. Membership commences on the date on which both Parties have executed the Membership Agreement (the “*Effective Date*”) and shall continue until expiration or earlier termination of the Term (as defined in Section 10).

2. SERVICES. Subject to the terms and conditions of the Agreement, NRCCUA shall provide or make available the Services and Deliverables to Member as more particularly described in each Participation Confirmation. NRCCUA shall not be obligated to perform or provide any Services or Deliverables pursuant to a Participation Confirmation until such Participation Confirmation has been executed by an authorized representative of each Party. NRCCUA may modify and update the Services to be provided under a Participation Confirmation so long as such modifications or updates do not materially decrease the functionality of the Services from that available as of the effective date of any Participation Confirmation, unless agreed to by both Parties in writing.

Member shall assign an individual to serve as the primary contact for NRCCUA in delivering the Services and Deliverables. NRCCUA’s provision of the Services or Deliverables, including any timetables agreed upon therefor, assume and are conditioned upon Member’s: (a) providing timely response to any requests from NRCCUA concerning critical decisions, essential information gathering, or approvals required to continue work in progress or which are required to meet such timetables; (b) providing timely access to all Personnel and other requested information that is deemed necessary by NRCCUA to fulfill its commitments as stated in the Agreement; and (c) preparing its site and providing IT services and network access, access to systems, hardware, and software (including remote access to systems and software) as set forth in the applicable Participation Confirmation or as requested by NRCCUA and required for NRCCUA to provide the Services or Deliverables, which shall be the sole responsibility of Member. Member shall be solely responsible for daily back-up and other protection of its data and software against loss, damage or corruption during the performance of Services and for any necessary reconstruction thereof.

Member is responsible for compliance with the Agreement by its Personnel and Member shall be responsible for any breach of the Agreement by any Personnel. Member will be assigned one or more unique identification names and passwords for access to and use of Data Lab (“*Authorized User IDs*”) to allow Member and its authorized Personnel to access Data Lab. Member shall be responsible for ensuring the security, confidentiality and proper use of all Authorized User IDs. Member acknowledges that it will be responsible for all losses and damages arising from the use of any Authorized User IDs (whether proper, improper, lawful or unlawful). Customer shall immediately inform NRCCUA if there is any reason to believe that an Authorized User ID or any other security device issued by NRCCUA has or is likely to become known to someone not authorized to use it or is being or is likely to be used in an unauthorized way. The Authorized User IDs shall be deemed Confidential Information of NRCCUA.

3. FEES AND PAYMENTS. Member shall pay NRCCUA (i) the initial annual Membership Fee set forth on Exhibit A prior to the Effective Date and an annual Membership Fee for each subsequent year of Membership thereafter and (ii) the annual Subscription Fees set forth on Exhibit A (collectively, the “*Fees*”). NRCCUA shall provide Member an invoice for Fees no earlier than sixty (60) days prior to each anniversary of the Effective Date. NRCCUA may increase the annual Membership Fee by an amount up to five percent (5%) of the prior year’s Membership Fee per year.

All Fees and other amounts payable under the Agreement shall be due and payable within thirty (30) calendar days from the date invoice is received. As between the Parties, Member shall bear all expenses incurred in performance of its obligations or exercise of its rights under the Agreement. Member must notify NRCCUA in writing of any dispute or disagreement with invoiced charges within thirty (30) days after the date of invoice or Member shall be deemed to have waived any dispute regarding the invoiced charges. Payment from TAMU will be due thirty (30) days from the date TAMU receives the invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code

All amounts payable under the Agreement shall exclude all applicable sales, use, transaction and other taxes and all applicable export and import fees, customs duties and similar charges. Member will be responsible for payment of all such taxes (other than taxes based on NRCCUA’s net income), fees, duties and charges, and any related penalties and interest, arising from the payment of any fees hereunder or the delivery of Services or Deliverables. As an agency of the State of Texas, Member is tax exempt.

4. CONFIDENTIALITY. The Parties acknowledge that during the performance of the Agreement each Party may have access to certain of the other Party’s Confidential Information and the Parties agree that all items of Confidential Information are proprietary to and shall remain the sole property of the disclosing Party.

Each Party agrees as follows: (i) to use the Confidential Information of the other Party only for the purposes of exercising its rights or performing its obligations hereunder; (ii) except as reasonably necessary to exercise its rights or perform its obligations hereunder, not to reproduce the Confidential Information of the other Party, (iii) to hold in confidence and protect the Confidential Information of the disclosing Party from dissemination to, and use by, any third party using the same degree of care it uses to protect its

own Confidential Information of like nature, but no less than a reasonable degree of care; (iv) to restrict access to the Confidential Information of the other Party to such of its Personnel who have a need to have access and who have been advised of and have agreed to treat such information in accordance with the terms of the Agreement; and (v) to return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of the Agreement, except to the extent required by applicable law. The foregoing obligations shall not apply to any Confidential Information that a receiving Party can demonstrate is: (a) publicly available other than through breach of the Agreement by such Party prior to disclosure by the disclosing Party; (b) already in such Party's possession prior to disclosure by the disclosing Party and not subject to an obligation of confidentiality; (c) obtained by such Party from a third party who has full right of disclosure; or (d) independently developed by such Party without any reference to the Confidential Information of the disclosing Party.

Any failure by either Party to comply with the requirements of this Section 4 may cause irreparable injury to the other Party without an adequate remedy at law. Accordingly, each Party agrees that the other Party shall be entitled, in addition to any other remedies that may be available in law, equity or otherwise, to obtain specific performance of, or an injunction against any breach or threatened breach of, this Section 4, or the continuation of any such breach, in each case, without the necessity of posting a bond or other security, as remedies for any such breach.

NRCCUA acknowledges that Member 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. Upon Member's written request, NRCCUA 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 Member in a non-proprietary format acceptable to Member. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which Member has a right of access. NRCCUA acknowledges that Member 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.

5. OWNERSHIP; LICENSE. NRCCUA owns all right, title, and interest in and to the Services and Deliverables (other than any Member Materials incorporated in such Deliverables), including all IP Rights in and to such Services and Deliverables (including all components thereof), and NRCCUA expressly reserves all rights to the Services and Deliverables not expressly granted to Member in the Agreement. As between the Parties, Member owns all right, title and interest in and to the Member Materials, including all IP Rights thereto (including all components thereof). Member grants to NRCCUA (i) the non-exclusive right and license during the Term to use Member Materials for purposes of providing the Services and the Deliverables and (ii) the non-exclusive and perpetual right to use, aggregate and combine the Member Materials with other data in connection with the provision of various analytical and other services provided to Member and other members of NRCCUA, including the distribution of such materials and data, so long as such use and distribution of such Member Materials is in the form of De-Identified Data. NRCCUA grants to Member a non-transferable and non-exclusive license, subject to the limitations attached to Third Party Components, to (i) access and use the Deliverables that are not Tangible End-User Deliverables solely for Member's activities in the ordinary course until the earlier of the (a) expiration or earlier termination of the Term or (b) such earlier date applicable to any Deliverables set forth in the Agreement and (ii) use the Tangible End-User Deliverables solely for Member's activities in the ordinary course in perpetuity.

Subject to Member's express rights in the Deliverables set forth herein, Member shall not: (i) license, sublicense, lease, transfer, assign, distribute, display, host, outsource, permit timesharing any service bureau use, or otherwise commercially exploit or make the Services and Deliverables available to any third party; (ii) access or use Deliverables or Services (including Student Information) in any way: (a) not in compliance with law; (b) for any purpose other than the NRCCUA-approved Educational and Educational-related Products and Services; or (c) or any other purpose that is inconsistent with the mission and purpose of NRCCUA or Membership, (iii) remove or modify any proprietary markings or notices of NRCCUA on the Services or Deliverables, or (iv) reverse engineer, create derivative works from, modify, alter, adapt, disassemble or decompile the Services or Deliverables.

6. DATA USE, PRIVACY AND SECURITY. Without the prior written consent of NRCCUA, Member (and its Personnel) shall not copy, release, use, lend, sell, rent, transmit, make available or otherwise make use of Student Information, to which Member is provided access pursuant to the Agreement, to or for any party other than Member (or, to the extent that Member use of Student Information or any Deliverables incorporating Student Information is limited to specified locations set forth in a Participation Confirmation, at or for the benefit of such other locations), except to its Personnel to the extent reasonably necessary for them to assist Member in exercising its rights under the Agreement so long as such Personnel are restricted to that purpose. Without limiting the foregoing, Member shall not send, transmit, or in any way provide any Student Information or any Deliverables incorporating Student Information to any third party for any reason, except for Member's Personnel that are contractually restricted to using the Student Information to provide services to Member consistent with Member's rights to use the Student Information under the Agreement. Student Information provided by NRCCUA under the Agreement shall be used solely for the Member and for the Member's approved Educational and Educational-related Products and Services purposes only. If Student Information is delivered to a mailing/lettershop service, or any other Personnel of Member, Member assumes full responsibility for ensuring that the Student Information is handled in a manner that complies with Member's obligations and limitations under the terms of the Agreement and applicable law, and that otherwise protects the confidentiality, integrity and security of the Student Information.

Member represents that at all times during the Term, its (and its Personnel's) use of the Services and collection, access, use, processing, storage, disposal, transfer and disclosure of Student Information does and shall comply with (i) all Data Laws and all other applicable laws and regulations, including all federal, state, and foreign privacy, data protection, data security, consumer protection, advertising, marketing and promotion laws; (ii) the terms, conditions and restrictions in the Agreement; and (iii) any written policies or instructions that NRCCUA provides to Member, which shall be effective upon receipt ("**Company Policies**"). Member shall dispose of Student Information as and when instructed by NRCCUA in writing, except as may be specifically set forth in this Section 6. Member shall limit access to Student Information to its Personnel with a need to handle it, and shall require its Personnel to comply with confidentiality and data usage and protection obligations that are consistent with all of Member's obligations to NRCCUA hereunder. If Member becomes aware of its failure to comply with Data Laws, Company Policies or the Agreement with respect to Student Information, it will provide NRCCUA prompt and detailed notice thereof and will work in good faith with NRCCUA to reasonably mitigate and correct any harm caused thereby.

Member shall transfer or disclose Student Information to third parties only: (i) to the extent reasonably necessary to send a communication permitted under the Agreement to a Student; (ii) as approved by NRCCUA in writing; (iii) as may be specifically set forth in the Agreement; or (iv) as required by applicable law or force of law. Member shall, however, be entitled to perpetually use De-identified Data for its own and third party purposes; provided, however, Member agrees not to try to re-identify the data and agrees to require the same of third parties with which it shares such data. Member shall securely destroy Student Information at the end of the Term or such earlier date set forth in the Agreement, except that Member may maintain a copy of Student Information as a business record to the extent required by applicable law.

Member shall develop and implement an appropriate, risk-based security program that includes reasonable administrative, physical and technical safeguards to protect Student Information that are consistent with prevailing industry practices, and shall ensure that all such safeguards, including the manner in which Student Information is collected, accessed, used, stored, processed, disposed of, transferred and disclosed, comply with applicable Data Laws and Company Policies.

Member represents that it has read this Section 6, understands its implications, and agrees to the terms described herein. Member understands that the obligations and restrictions with respect to Student Information under this Section 6 are in addition to the obligations and restrictions that apply to Confidential Information generally under Section 4.

7. REPRESENTATIONS AND WARRANTIES; EXCLUSIVE REMEDY; DISCLAIMER. Each Party represents to the other Party that as of the Effective Date and as of the effective date of each Participation Confirmation: (i) it is duly organized, validly existing and in good standing as a corporation or other entity, organization or association as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering; (ii) it has the full right, power and authority to enter into the Agreement and to perform its obligations under the Agreement; (iii) the execution of the Membership Agreement and any Participation Confirmation by its representative whose signature is set forth therein has been duly authorized by all necessary action of the Party; and (iv) the Agreement constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws and equitable principles related to or affecting creditors' rights generally or the effect of general principles of equity.

Member represents to NRCCUA that all information submitted to NRCCUA as part of the Agreement is accurate and Member owns or otherwise has and will have the necessary rights and consents in and relating to the Member Materials so that, when received by NRCCUA and incorporated in or used in connection with the Services and Deliverables, the Member Materials do not and will not infringe, misappropriate or otherwise violate any IP Rights, any privacy rights or other rights of any third party or violate any applicable law, including Data Laws.

In the event that the Services and Deliverables are not in conformity in all material respects with all Specifications at the time of delivery to Member or are not performed in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar services, within a reasonable time after Member's written notice of such non-conformance, NRCCUA shall use reasonable efforts to cure such non-conformance; provided, that if NRCCUA cannot cure such defect after reasonable efforts, Member may, at its option, terminate the Agreement by serving written notice of termination. The foregoing constitutes Member's sole remedy, and NRCCUA's sole obligation, with respect to the foregoing limited warranty. NRCCUA makes no representation as to the interoperability of the Services with Member's or any third party's system.

EXCEPT AS OTHERWISE EXPRESSLY WARRANTED IN THE AGREEMENT, THE SERVICES, THIRD PARTY COMPONENTS AND DELIVERABLES ARE PROVIDED BY NRCCUA "AS IS" AND NRCCUA MAKES NO OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS OR COVENANTS AND EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, RESULTS, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. MEMBER ACKNOWLEDGES THAT NRCCUA'S OBLIGATIONS UNDER THE AGREEMENT ARE FOR THE BENEFIT OF MEMBER ONLY. MEMBER ACKNOWLEDGES THAT NO REPRESENTATIVE OF NRCCUA OR OF ITS AFFILIATES IS AUTHORIZED

TO MAKE ANY REPRESENTATION OR WARRANTY THAT IS NOT EXPRESSLY SET FORTH IN THE AGREEMENT. ALTHOUGH NRCCUA WILL USE COMMERCIALY REASONABLE EFFORTS THAT IT DEEMS APPROPRIATE TO REMEDY AND AVOID ANY IMPAIRED OR DISRUPTED ACCESS TO DATALAB, NRCCUA CANNOT AND DOES NOT GUARANTEE THAT ANY SUCH IMPAIRED OR DISRUPTED ACCESS WILL NOT OCCUR.

8. LIMITATION OF LIABILITY. IN NO EVENT SHALL NRCCUA OR ITS AFFILIATES BE LIABLE TO MEMBER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, LOSS OF PROFITS, REVENUES OR SAVINGS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST, CORRUPTED OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF NRCCUA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, AND REGARDLESS OF WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY. THE CUMULATIVE LIABILITY OF NRCCUA TO MEMBER FOR ALL CLAIMS ARISING FROM OR RELATING TO THE AGREEMENT, INCLUDING ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE AGGREGATE AMOUNTS PAID TO NRCCUA BY MEMBER IN THE TWELVE-MONTH PERIOD PRECEDING ANY SUCH CLAIM. MEMBER AGREES TO THE FOREGOING SECTION TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS.

The disclaimers, exclusions and limitations of liability set forth in these Terms form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of the Agreement, including the economic terms, would be substantially different.

9. INDEMNIFICATION. To the extent permitted by the Constitution and laws of the State of Texas, Member shall indemnify, hold harmless, and, at NRCCUA's option, defend NRCCUA from and against all losses, expenses, damages, and liabilities resulting from any claim by any third party (including government regulators) arising from or in connection with any breach of Member's covenants, obligations, representations, warranties or other agreements hereunder or use of Member Materials in accordance with the Agreement.

10. TERM AND TERMINATION. The initial term of the Agreement (the "**Initial Term**") shall commence on the Effective Date and shall continue for a period of four (4) years. The Agreement may be renewed for additional four (4) year terms (each such additional term a "**Renewal Term**" and together with the Initial Term, the "**Term**") upon the mutual agreement of the Parties (including with respect to the Fees applicable in any Renewal Term). In all events, the Agreement shall remain in full force and effect until the expiration or termination of any and all Participation Confirmation(s) executed prior to the end of the Term.

Either Party may terminate the Membership Agreement or any Participation Confirmation in accordance with the rights of termination set forth in any other provisions of the Agreement. Either Party may terminate the Membership Agreement or any outstanding Participation Confirmation upon written notice in the event that the other Party materially breaches the Agreement if (i) in the case of material breach resulting from non-payment of amounts due hereunder, the breaching Party has failed to pay such amounts within ten (10) days after receiving written notice thereof or (ii) the breaching Party has failed to cure any other material breach (or to commence diligent efforts to cure such breach that are reasonably acceptable to the non-breaching Party) within thirty (30) days after receiving written notice thereof. Either Party may terminate the Membership Agreement or any outstanding Participation Confirmation upon written notice if the other Party makes a general assignment for the benefit of creditors, becomes the subject of any voluntary or involuntary case or proceedings under the applicable federal bankruptcy law or other applicable law of any jurisdiction regarding bankruptcy, insolvency, reorganization, adjustment of debt or other forms of relief for debtors or has a receiver, trustee, liquidator, assignee, custodian or similar official appointed for it or for any substantial part of its property.

In the event the Membership Agreement or any Participation Confirmation is terminated by Member for any reason other than as a result of NRCCUA's breach, Member shall pay NRCCUA the Fees payable for the remainder of the then current Initial Term or Renewal Term, as the case may be.

Notwithstanding the foregoing, NRCCUA may, directly or indirectly suspend, terminate or otherwise deny Member's or any other person's access to or use of all or any part of the Services or Deliverables, in whole or in part, without incurring any resulting obligation or liability if NRCCUA believes, in its reasonable discretion, that: (i) Member has failed to comply with, any material term of the Agreement, or accessed or used the Services or Deliverables beyond the scope of the rights granted or for a purpose not authorized under the Agreement or in any manner that does not comply with any instruction or requirement of the Documentation; (ii) Member has failed to pay any Fees when due and payable; (iii) Member has been, or is likely to be involved in any fraudulent, misleading or unlawful activities, whether or not relating to any of the Services or Deliverables; or (iv) the Agreement expires or is terminated. This Section 10 does not limit any of NRCCUA's other rights or remedies, whether at law, in equity or under the Agreement.

Termination of the Agreement will not relieve the Member of its obligation to pay all Fees that accrued prior to the effective date of termination. In the event of a termination of the Agreement, each Party shall: (a) immediately discontinue all use of the other Party's Confidential Information; (b) delete the other Party's Confidential Information from its computer storage or any other media, including online and off-line libraries; and (c) return to the other Party or, at the other Party's option, destroy all hard copies of such other Party's Confidential Information then in its possession. The provisions of Sections 4, 5, 8, 9, 11, and 12 as well as the provisions

of Section 7 related to NRCCUA's disclaimer of warranty, the provisions of this Section 10 related to the effect of and Parties' obligations upon termination of the Agreement, and Member's obligations to pay any amounts due and outstanding hereunder, shall survive any termination or expiration of the Agreement.

11. APPLICABLE LAW. The Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with, and shall be governed by, the laws of the State of Texas, without giving effect to its rules regarding conflicts of laws. 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 Member and NRCCUA to attempt to resolve any claim for breach of contract made by NRCCUA that cannot be resolved in the ordinary course of business. NRCCUA shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of Texas A&M University, who shall examine NRCCUA's claim and any counterclaim and negotiate with NRCCUA in an effort to resolve the claim.

12. MISCELLANEOUS

12.1. Entire Agreement; Participation Confirmation of Precedence. These Terms, the Membership Agreement and the Participation Confirmation(s) set forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersede and merge all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties shall be bound by any conditions, inducements or representations other than as expressly provided for herein. In the event of a conflict between the terms set forth in the Membership Agreement, these Terms and any Participation Confirmation, the following order of precedence shall govern: (a) first, the applicable Participation Confirmation; (b) second, these Terms; and (c) third, the Membership Agreement. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the provision of Services or Deliverables covered hereby, the terms and conditions of that contract shall prevail to the extent they are inconsistent with the Agreement.

12.2. Force Majeure. NRCCUA shall be excused from performance of its obligations under the Agreement if such a failure to perform results from compliance with any requirement of applicable law, acts of God, fire, strike, lockout, embargo, terrorist attack, war, insurrection, riot, epidemic, fire, flood or other disaster, act of government, including governmental regulations superimposed after the fact, communication or network failure, failures of vendors, power failure, failure of computer equipment or systems and/or software not provided by NRCCUA, or other causes beyond the reasonable control of NRCCUA.

12.3. Notices. Each Party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under the Agreement (each, a "**Notice**") in writing and addressed to the other Party at the addresses set forth in the Membership Agreement or on the face of an applicable Participation Confirmation (or to such other address that may be designated by the receiving party from time to time in accordance with this Section 12.3). Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile, e-mail (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Agreement, a Notice is effective only (a) upon receipt by the receiving party and (b) if the party giving the Notice has complied with the requirements of this Section 12.3.

12.4. Assignment. Member may not assign its rights or delegate its obligations under the Agreement without the prior written consent of NRCCUA and any purported assignment or delegation in violation shall be null and void. No assignment or delegation shall relieve Member of any of its obligations hereunder. NRCCUA may subcontract performance of the Services or production and delivery of the Deliverables without notice to Member. NRCCUA may assign its rights or delegate its obligations to an entity that acquires all or substantially all of its business or assets, whether by merger, reorganization, acquisition, sale, or otherwise without notice to Member. The Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

12.5. Independent Contractors. Member and NRCCUA acknowledge and agree that the relationship arising from the Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them under applicable law, and the Parties are acting as independent contractors in making and performing the Agreement.

12.6. Amendment / Waiver. No amendment to the Agreement shall be valid unless such amendment is made in writing and is signed by the authorized representatives of the Parties. No waiver under the Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described therein and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder shall not be deemed a waiver of that right.

12.7. Severability. If any provision of the Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in the Agreement shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of the Agreement invalid or unenforceable whatsoever.

12.8. No Third Party Beneficiaries. The Parties acknowledge that the covenants set forth in the Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing in the Agreement, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of the Agreement.

12.9. Counterparts. The Membership Agreement and any Participation Confirmation may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one agreement. A signed copy of the Membership Agreement or any Participation Confirmation delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of such document.

12.10. Interpretation. The headings in the Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of the Agreement. The Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. Whenever the words “include,” “includes,” or “including” are used in the Agreement, they will be deemed to be followed by the words “without limitation.”

13. DEFINITIONS. When capitalized and used in these Terms:

“**Affiliate**” means an entity that controls, is controlled by, or are under common control with, a Party. “**Agreement**” means, collectively, the Membership Agreement, these Terms, and any Participation Confirmation(s). “**Confidential Information**” means any information, material, or data of a confidential or proprietary nature of a Party or its Affiliates in oral, electronic or written form that the receiving Party knows or has reason to know is proprietary or confidential and that is disclosed by a Party in connection with the Agreement or that the receiving Party may have access to in connection with the Agreement. Student Information is NRCCUA Confidential Information. “**Data Lab**” means NRCCUA’s proprietary application commonly known as “Data Lab” made available as software-as-a-service. “**Data Laws**” means all government laws and regulations, and voluntary industry standards, applicable to the receipt and use of Student Information or other Services or Deliverables, including the U.S. Children’s Online Privacy Protection Act, the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (including any related opt-out requirements), laws and regulations promulgated by the Federal Communications Commission and the Federal Trade Commission, and regulations and guidelines promulgated by the U.S. Children’s Advertising Review Unit. “**De-identified Data**” means de-identified, anonymous versions of the Student Information that are not Personal Information, and are in no way linked or linkable to personally identifiable data subjects or, directly or indirectly, to NRCCUA or any source from which it obtained the data (e.g., My College Options, Inc.). “**Deliverables**” means any tangible or intangible materials and other deliverables to be provided or created individually or jointly in connection with the Services, including Documentation, all inventions, discoveries, methods, processes, formulae, ideas, concepts, techniques, know-how, data (including Student Information), designs, models, prototypes, works of authorship, reports, studies, base cases, drawings, manuals, procedures, Software, proprietary tools, methods of analysis and other information, whether or not capable of protection by patent, copyright, trade secret, confidentiality, or other proprietary rights, or discovered in the course of performance of the Agreement that are embodied in such work or materials. “**Documentation**” means all materials supplied by, or on behalf of, NRCCUA in any media describing the features, functionality, volume, requirements or Specifications of any Deliverables or Services, including any and all installer’s, operator’s and user’s manuals, training materials, guides, functional or technical specifications or other materials. “**Educational and Educational-related Products and Services**” means post-secondary educational programs (e.g., colleges and universities) and such education-related products or services that fit within one of the Membership Classes (Post-Secondary/Institutional; Organizational; and Association), have been approved by NRCCUA after having been found (in its sole discretion) to have redeeming educational-related value and fit into one of the following categories: (a) financial planning, student loans and scholarships; (b) enrichment opportunities such as travel programs, camps, extracurricular activities and conferences; (c) curriculum materials, books, Internet-based educational programs, educational magazines and low-cost literary products; (d) academic assistance, remedial help and preparation for college-entrance examinations; (e) recognition for high levels of academic performance; (e) participation in community service; (f) learning about civic responsibilities; and (g) employment, career options and the military. “**IP Rights**” means all (i) patents, patent disclosures and inventions (whether patentable or not), (ii) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (iii) copyrights and copyrightable works (including computer software and programs), and rights in data and databases, (iv) trade secrets, know-how and other confidential information, and (v) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world. “**Member Materials**” means all data (including Student data and Personal Information), images, content, trademarks, service marks, and Internet domain names, specifically provided by Member to NRCCUA for incorporation in the Deliverables or use with the Services. “**NRCCUA Materials**” means data (including Student Information), images, content, trademarks, service marks, and Internet domain names and other materials developed or acquired by NRCCUA other than Member Materials. “**Participation Confirmation**” means a document which has been completed and executed by both Parties, and which specifies the scope and schedule of Services to be performed by NRCCUA and the fees associated with such Services. Each Participation Confirmation entered into hereunder shall be governed by the terms and conditions of the Agreement. “**Personal Information**” means any information or data that can reasonably be used to identify an individual person, and any other information or data that is treated as personal information or personally identifiable information under applicable law. De-identified Data is not Personal Information unless otherwise required by applicable law. “**Party**” means individually, as applicable, NRCCUA or Member, and “**Parties**” means in each instance, NRCCUA and Member. “**Personnel**” means agents, employees or subcontractors of a Party. “**Services**” means the services to be provided by or on behalf of NRCCUA to Member under the Agreement, including any Software made available to Member as a service. “**Software**” means those certain databases, applications, operating systems, utility programs, communications software, interfaces and other software identified in any Participation Confirmation or otherwise that NRCCUA makes accessible to Member as part of the Services, including Data Lab. “**Specifications**” means the features, functionality, volume, requirements and/or specifications for any Deliverables as set forth in the applicable

Participation Confirmations and any Documentation. “**Students**” means individuals that NRCCUA has reason to believe are U.S. secondary school students, and “**Student**” means any such Students, individually. “**Student Information**” means all Personal Information and other data provided by NRCCUA as part of the Deliverables concerning Students and/or any persons related to them (e.g., parents or guardians). De-identified Data is not Student Information unless otherwise required by applicable law. “**Tangible End-User Deliverables**” means Deliverables that are materials in a tangible form provided by NRCCUA under the Agreement for use by third-party end users other than Member or its Affiliates, including written marketing materials. “**Third Party Components**” means any third party software, intellectual property, including any platform, code (including open source code) and components that are incorporated in the Services or Deliverables.

14. State Contracting Requirements:

Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: “Under Section 231.006, *Texas Family Code*, the NRCCUA or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”

Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, NRCCUA agrees that any payments owing to NRCCUA under this Agreement may be applied directly toward certain debts or delinquencies that NRCCUA owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

Prohibited Bids and Agreements. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: “Under Section 2155.004, *Texas Government Code*, the NRCCUA certifies that the individual or business entity named in this bid or 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.”

Venue. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against Member shall be in Brazos County, Texas.

Access by Individuals with Disabilities

NRCCUA represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Customer under this Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent NRCCUA becomes aware that the EIRs, or any portion thereof, do not comply then NRCCUA represents and warrants that it will, at no cost to Customer, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

Franchise Tax Certification. If NRCCUA is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then NRCCUA certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that NRCCUA is exempt from the payment of franchise (margin) taxes.

Products and Materials Produced in Texas. NRCCUA agrees that in accordance with Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under this Agreement, NRCCUA will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

Loss of Funding. Performance by Member under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”). If the Legislature fails to appropriate or allot the necessary funds, Member will issue written notice to NRCCUA and Member may terminate this Agreement without further duty or obligation hereunder. NRCCUA acknowledges that appropriation of funds is beyond the control of Member.

Prompt Payment Act. Payment from Member will be due thirty (30) days from the date Member receives the invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code.

State Auditor's Office. NRCCUA understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. NRCCUA agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. NRCCUA will include this provision in all contracts with permitted subcontractors.

Non-Waiver. NRCCUA expressly acknowledges that Member is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Member of its right to claim such exemptions, privileges, and immunities as may be provided by law.

NRCCUA Certification regarding Boycotting Israel. Pursuant to Chapter 2270, *Texas Government Code*, NRCCUA certifies NRCCUA (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. NRCCUA acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

NRCCUA Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, NRCCUA certifies NRCCUA (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. NRCCUA acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Conflict of Interest. By executing and/or accepting this Agreement, NRCCUA and each person signing on behalf of NRCCUA certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by Member or TAMUS, 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.

EXHIBIT A
PARTICIPATION CONFIRMATION

Pricing for Texas A and M University

4-Year Annual Subscription (Year 1)		
	Contract Price^^	Introductory Price^^
Annual Platform Subscription Fee & Membership Fee**	\$34,900	\$24,900
Apps		
· Class Planner		
· Enrollment Lens – with Predictive Analytics		
· DataCloud – Access to 30,000 ACT student profiles (EOS)	\$12,900	\$0
Up to 10 users on Data Lab Member Benefit apps		
Up to 5 named users on the Enrollment Lens app		
Annual Implementation and Data Integration Fee and Professional Development and Training		
Ability to upload institutional data into the platform as desired		
Data Integration Services to ensure accurate analytic reporting in Enrollment Lens		
Training on Enrollment Lens and Model Best Practices		
Access to eLearning resources		
Access to annual webinars		
Up to 2 participants in Strategic Enrollment Analyst workshop	\$5,000	\$0
Consultative Services		
Semi-annual strategy sessions and monthly funnel analytics review sessions with a member of the Encoura Enrollment Services Team	\$10,000	\$0
	\$62,800	\$24,900

- Additional search names may be added each year up to a 25% increase at the market price of 43 cents each. Data delivered in excess of the 25% increase will be invoiced per the market price, based on when the data is requested by Client.
- **Membership valued at \$2,000 gives you access to Encoura Data Lab apps and tools, Class Planner, Eduventures Weekly Wake-up Call Reports, Eduventures Research app that includes the Wake-up Call Library and Student Sentiment Survey Report, 2 passes to the Annual Eduventures Summit.
- The pricing is in effect for 30 days from the date of this proposal.

^^ Member shall be responsible for paying only the amounts listed under "Introductory Price" for the initial term of this Membership Agreement.

Pricing for Texas A and M University

4-Year Annual Subscription (Years 2-4)		
	Contract Price^^	Introductory Price^^
Annual Platform Subscription Fee & Membership Fee**	\$34,900	\$24,900
Apps		
· Class Planner		
· Enrollment Lens – with Predictive Analytics		
· DataCloud – Access to 30,000 ACT student profiles (EOS)	\$12,900	\$0
Up to 10 users on Data Lab Member Benefit apps		
Up to 5 named users on the Enrollment Lens app		
Annual Implementation and Data Integration Fee and Professional Development and Training		
Ability to upload institutional data into the platform as desired		
Data Integration Services to ensure accurate analytic reporting in Enrollment Lens		
Training on Enrollment Lens and Model Best Practices		
Access to eLearning resources		
Access to annual webinars		
Up to 2 participants in Strategic Enrollment Analyst workshop	\$5,000	\$0
Consultative Services		
Semi-annual strategy sessions and monthly funnel analytics review sessions with a member of the Encoura Enrollment Services Team	\$10,000	\$0
	\$62,800	\$24,900

- Additional search names may be added each year up to a 25% increase at the market price of 43 cents each. Data delivered in excess of the 25% increase will be invoiced per the market price, based on when the data is requested by Client.
- **Membership valued at \$2,000 gives you access to Encoura Data Lab apps and tools, Class Planner, Eduventures Weekly Wake-up Call Reports, Eduventures Research app that includes the Wake-up Call Library and Student Sentiment Survey Report, and 2 passes to the Annual Eduventures Summit.
- The pricing is in effect for 30 days from the date of this proposal.
- NRCCUA has the ability to represent ACT student profiles in the platform contracts. Until the ACT and NRCCUA student data sets are fully integrated in NRCCUA Encoura Class Planner, institutions will continue to select student profile volumes (up to the volume designated in this contract) from the ACT (EOS) ENROLL platform, but will be invoiced by NRCCUA in this contract. Once student profiles from NRCCUA and ACT are combined into Encoura Class Planner as one data set, projected September 2019, institutions can combine the volumes currently listed separately in this contract as EOS (ACT) and TIP (NRCCUA) as one DataCloud access volume. The institutions then will have the ability to choose how to segment student profiles for each of their markets in Encoura Class Planner up to this contracted total volume.

^^ Member shall be responsible for paying only the amounts listed under "Introductory Price" for the initial term of this Membership Agreement.