

CONTRACT NO.: T022018
AGENCY CODE: 28190 (3320222)

PURCHASE AGREEMENT

State University of New York College at Geneseo
and
EAB GLOBAL, INC.

This PURCHASE AGREEMENT (the "Agreement") made this ____ day of February, 2019, by and between STATE UNIVERSITY OF NEW YORK, an educational corporation organized and existing under the laws of the State of New York, with its principal office located at State University Plaza, Albany, New York 12246 acting for and on behalf of State University of New York College at Geneseo located at 1 College Circle, Geneseo, NY 14454 ("SUNY") and EAB GLOBAL, INC. a Delaware corporation having its principal office located at 2445 M Street NW, Washington DC 20037 ("Contractor").

WHEREAS, SUNY requires certain Early Alert with Predictive Analytics Software and Related Maintenance, Support, and Professional Services (the "Software") as more fully set forth in the Request for Proposal REA:227 (RFP), dated August 6, 2018, as amended, incorporated herein and made a part hereof as Exhibit B (the "RFP"); and

WHEREAS, Contractor has represented to SUNY that it is experienced and well-qualified to provide such Software via the Contractor's Student Success Collaborative program as more fully set forth in Contractor's Response to RFP dated September 18, 2018 including Contractor's Financial Proposal dated February 12, 2019, incorporated herein and made a part hereof as Exhibit C (the "RFP Response").

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the parties hereto agree as follows:

1. Software and Related Services.

a. Scope. Contractor agrees that it shall provide the Software, including the Navigate Student Success Collaborative membership resources, best practice research and networking, change management, implementation support, technical support, and related services more particularly described in, and in accordance with, the provisions of the RFP (Exhibit B) and Contractor's RFP Response (Exhibit C).

b. Products or Services Outside Scope of Agreement. SUNY shall not be responsible for any products or services provided by Contractor that are outside the scope of this Agreement. SUNY shall not be responsible for any additional costs other than the costs expressly provided for in this Agreement, or for any work performed that has not been properly authorized in writing by SUNY.

2. **Fees.**

a. Not-To-Exceed Amount. SUNY shall pay Contractor a sum not to exceed SIX HUNDRED FORTY-EIGHT THOUSAND SEVENTY SIX Dollars (\$648,076) as more particularly provided for in Contractor's RFP Response (Exhibit C).

b. Payment of Fees. Contractor must submit a proper invoice as more particularly provided for in Contractor's RFP Response (Exhibit C) to the SUNY Geneseo Accounting Services Department, as instructed below. Payment will be processed after receipt of a proper invoice, and approval of the invoice by the College's Dean of Academic Planning and Advising.

Accounting Services
Doty Hall 325
SUNY Geneseo
1 College Circle
Geneseo, NY 14454

c. Travel Expenses. In the event Contractor is required to be reimbursed for travel, reimbursement rates shall not exceed the current NYS Schedule of Allowable Reimbursable Travel Expenses, available from the New York State Comptroller at:
<https://www.osc.state.ny.us/agencies/travel/travel.htm>. Any such travel expenses shall not exceed the Estimated Not-To-Exceed Lump Sum Amount set forth in Contractor's RFP Response.

d. Late Payments. Interest for late payment shall be governed by Section 179g of New York State Finance Law.

e. Electronic Payment Authorization. Contractor shall provide complete and accurate billing invoices to SUNY in order to receive payment. Billing invoices submitted to SUNY must contain all information and supporting documentation required by SUNY and the Office of State Comptroller (OSC). Payment for invoices submitted by Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Vice Chancellor for Business and Finance of the State University of New York or designee, in her/his sole discretion, due to extenuating circumstances. Such

electronic payment shall be made in accordance with ordinary New York state procedures and practices. Contractor shall comply with the OSC procedures to authorize payments. Authorization forms are available at the OSC website at www.osc.state.ny.us/epay, by email at epunit@osc.state.ny.us or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this contract if it does not comply with the OSC's electronic payment procedures, except where the Vice Chancellor or designee has expressly authorized payment by paper check as set forth above.

3. Term and Termination.

a. Term. This Agreement shall be effective and binding upon its execution by both parties (the "Effective Date"). This Agreement shall begin on the Effective Date and continue for a period of five (5) years (the "Term") unless earlier terminated by either party as provided for in this Agreement.

b. Termination by Contractor. In addition to the termination provisions provided for in the RFP, Contractor may terminate this Agreement upon thirty (30) days prior written notice in the event that SUNY breaches a material provision of this Agreement and fails to cure such breach within ninety (90) days following written notice of the same.

c. Termination by SUNY. This Agreement may be terminated by SUNY for any of the following reasons:

- a. *Convenience of SUNY:* After the second anniversary of the Effective Date, SUNY may terminate this Agreement at any anniversary of the Effective Date, for whatever reason by providing Contractor at least one hundred twenty (120) days written notice prior to the applicable anniversary of the Effective Date.
- b. *Event of default:* This Agreement may be terminated in the event of breach of any of its provisions by Contractor, or if Contractor's Services are deemed unsatisfactory in SUNY's sole discretion, due to Contractor's fault or negligence, or that of its officers, employees, subcontractors, agents, licensees, licensors, or affiliates. In such event, SUNY will send a written cure notice in accordance with the Notice provisions of this Agreement, and Contractor shall have thirty (30) days to correct the deficiencies noted. If the deficiencies are not corrected, SUNY may terminate this Agreement immediately upon written notice.
- c. *Deficient Certifications:* SUNY shall have the right to terminate in the event the State Finance Law sections 139-j and 139-k certifications executed by Contractor are found to be intentionally

false or incomplete. SUNY shall have the right to terminate in the event the successful bidder's Department of Taxation and Finance Contractor Certification form, ST 220-CA, statements are found to be false or incomplete.

- d. *Lack of Funds*: If for any reason the State of New York terminates or reduces its appropriations to SUNY, the Agreement may be terminated or reduced at SUNY's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by Contractor where funds are available to SUNY for payment of such costs. In any event, no liability shall be incurred by the State (including SUNY) beyond monies available for the purposes of the Agreement.
- e. SUNY may terminate the Agreement, upon written notice, in the event of any of the following: (1) Contractor makes an assignment for the benefit of creditors; (ii) a petition in bankruptcy or any insolvency proceeding is filed by or against Contractor and is not dismissed within thirty (30) days from the date of filing; or (iii) all or substantially all of Contractor's property is levied upon or sold in any judicial proceeding.

4. **Insurance**. During the Term of this Agreement, Contractor shall maintain insurance coverage at its own expense as provided in this paragraph, and shall deliver Certificates of Insurance in a form satisfactory to SUNY before commencing any work under this Agreement. Certificates shall reference the Contract Number. Certificates of Insurance must indicate the applicable deductible/self insured retention on each policy. Certificates shall be mailed to: SUNY Geneseo, Doty Hall 315, 1 College Circle, Geneseo, NY 14454.

The policies of insurance set forth below shall be written by companies authorized by the New York Department of Financial Services to issue insurance in the State of New York ("admitted" carriers) with an A.M. Best company rating of "A-" or better.

Policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice to SUNY (except for non-payment as required by law) or Contractor will directly provide SUNY with such prior written notice to Rebecca E. Anchor, Director of Purchasing & Central Services, Doty Hall 315, 1 College Circle, Geneseo, NY 14454.

All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that

may be available to SUNY for any claim arising from Contractor's work under the Agreement, or as a result of Contractor's activities. Any other insurance maintained by SUNY shall be excess of and shall not contribute with Contractor's insurance, regardless of any "other insurance" clause contained in any SUNY policy of insurance.

At least two weeks prior to the expiration of any policy required by this Agreement, or upon renewal if not available prior to, evidence of renewal or replacement of policies of insurance with terms no less favorable to SUNY than the expiring policies shall be delivered to SUNY in the manner required for service of Notice hereunder.

a. A professional liability policy (errors and omissions) in the amount of ONE MILLION DOLLARS (\$1,000,000), which shall be maintained for a period of three (3) years after completion of this contract. Said policy shall not be issued on a claims-made policy form.

b. Workers' Compensation and Disability Benefits Coverage for the life of this Agreement for the benefit of employees required to be covered by the New York State Workers' Compensation Law and the New York State Disability Benefits Law. Evidence of coverage must be provided on forms specified by the Chair of the Workers' Compensation Board.

c. General Liability Insurance with limits of ONE MILLION DOLLARS (\$1,000,000) per claim and TWO MILLION DOLLARS (\$2,000,000) in the aggregate. Such policy shall include the State University of New York as an additional insured.

d. Business Automobile Liability insurance covering liability arising out of the use of any motor vehicle in connection with the work, including owned, leased, hired and non-owned vehicles bearing, or under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least ONE MILLION DOLLARS (\$1,000,000) and shall include the State University of New York as additional insured. The limits may be provided through a combination of umbrella/excess liability policies.

5. **Liability.** Contractor understands and agrees that it is responsible for the performance of the Software in accordance with the terms and conditions of this Agreement. SUNY may look solely to Contractor for remedy, redress, liability for any failure to perform, whether caused by Contractor itself or by one or more of its officers, employees, subcontractors, agents, licensees, licensors or affiliates or any person or entity acting on behalf of Contractor in providing the Software. Contractor shall be fully liable for the actions of its officers, employees, subcontractors, agents, licensees, licensors, or affiliates or any person or entity

acting on its behalf in providing the Software. Contractor will be responsible for the work, direction and compensation of any person or entity it engages as an officer, expert, employee, consultant, agent, independent contractor, or subcontractor. Nothing in this Agreement or the performance thereof by Contractor will impose any liability or duty whatsoever on SUNY including, but not limited to, any liability for taxes, compensation, commissions, Workers' Compensation, disability benefits, Social Security, or other employee benefits for any person or entity.

6. **Indemnification.**

a. **Contractor.**

(1) Contractor shall be responsible to and shall fully defend, indemnify, and hold harmless the State of New York and the State University of New York and their respective officers, trustees, directors, agents and employees without limitation, from any and all third party claims, losses, expenses, damages and liabilities, including reasonable attorneys' fees, to the extent arising out of the acts or omissions of Contractor, its officers, employees, agents, subcontractors or licensees constituting breach in any performance under this Agreement.

(2) Contractor will indemnify, defend and hold harmless SUNY and its personnel from any and all third party claims, liabilities and expenses arising from any infringement, misappropriation, or other violation by the Contractor and/or its Software of any United States patent, copyright, trademark, service mark, or trade secret right of a third party; provided that SUNY used the Software in accordance with the terms of the Agreement and consistent with the purpose for which they were provided to SUNY. Contractor shall have no liability for any claim of infringement based on (a) Software which have been modified by SUNY or any third party on SUNY's behalf without Contractor's consent; (b) SUNY's unauthorized or unanticipated use of the Software in connection with data, including SUNY Data, where use with such data gave rise to the infringement claim, or (c) SUNY's unauthorized or unanticipated use of the Software with third party software or hardware, where use with such other software or hardware gave rise to the infringement claim. Should the Software become, or in Contractor's opinion are likely to become, the subject of a claim of infringement, Contractor may, at its option, (x) obtain the right for SUNY to continue using the Software, (y) replace or modify the Software so they are no longer infringing, or (z) if neither of the foregoing options is commercially reasonable, terminate the right of SUNY to use the affected Software. Upon such termination, Contractor will refund to SUNY, any fees paid for Software to be provided following the effective termination date. Where a dispute or claim arises relative to a real or anticipated infringement, SUNY may require Contractor, at its sole expense, to

submit such information and documentation, including formal patent attorney opinions, as SUNY shall require.

(3) New York State reserves the right to join such action, at its sole expense, when it determines there is an issue involving a significant public interest.

b. SUNY. Subject to the availability of lawful appropriations and the New York State Court of Claims Act, SUNY will hold Contractor harmless from, and indemnify it for, any final judgment of a court of competent jurisdiction only to the extent attributable to the negligence of SUNY or of its officers or employees when acting within the course and scope of their employment.

7. **Subcontracting**. In the event Contractor uses partners, subcontracts or subcontractors, Contractor will remain responsible for compliance with all specifications and performance of all obligations under this Agreement.

a. Prime Contractor. Contractor will be the prime contractor. SUNY's approval of a subcontractor shall not relieve Contractor of any of its responsibilities, duties and liabilities under this Agreement. Contractor shall be solely responsible to SUNY for the acts, omissions or defaults of such subcontractors and of such subcontractors' officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of Contractor to the extent of its subcontract. No provisions of this Agreement shall create, or be construed as creating, any contractual relation between SUNY and any subcontractor or sub-subcontractor or with any person, firm or corporation employed by, contracted with or whose services are utilized by Contractor.

b. Administration, etc. Contractor shall be fully responsible for the administration, integration, coordination, direction and supervision of all of its subcontractors and of all work. Contractor shall check requirements of the work and coordinate and adjust as required so that conflicts in time, work space, equipment and supplies do not occur in the work being performed by Contractor with its own employees and the work being performed by its subcontractors.

c. Insurance. If applicable, no subcontractor shall be permitted to work as a subcontractor under this Agreement until it has furnished satisfactory evidence to SUNY of the insurance required by law, including but not limited to, worker's compensation, disability, and paid family leave.

d. Written Agreement. Contractor shall execute a written agreement with each of its subcontractors under this Agreement and shall require all such subcontractors to execute with their sub-subcontractors a written agreement which shall bind each to the terms and provisions substantially similar to the

terms and provisions of this Agreement as the prime contract awarded, insofar as such terms and provisions are applicable to the work to be performed by such direct subcontractors. Contractor shall require all such subcontractors and sub-subcontractors to promptly, upon request, file with SUNY a copy of such agreements, from which the price and terms of payment may be deleted.

8. **Vendor Responsibility.**

a. **Initial Review.** SUNY has undertaken an affirmative review of Contractor's responsibility in accordance with the standards outlined in Comptroller's Bulletin G 221, and based upon such review, has reasonable assurance that Contractor is responsible.

b. **General Responsibility.** Contractor shall at all times during the Term of this Agreement remain responsible. Contractor agrees, if requested by the SUNY Chancellor or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

c. **Suspension of Work for Non-Responsibility.** The SUNY Chancellor, in his or her sole discretion, reserves the right to suspend any or all activities under the contract awarded, at any time, when he or she discovers information that calls into question the responsibility of Contractor. In the event of such suspension, Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the SUNY Chancellor or his or her designee issues a written notice authorizing a resumption of performance of the Agreement.

d. **Termination for Non-Responsibility.** Upon written notice to Contractor and a reasonable opportunity to be heard with appropriate SUNY officials or staff, the contract awarded may be terminated by the SUNY Chancellor or his or her designee at Contractor's expense, where Contractor is determined by the SUNY Chancellor or his or her designee to be non-responsible. In such event, the SUNY Chancellor or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

9. **Office of Federal Contract Compliance Programs.** To the extent applicable, Contractor, and any Subcontractor shall abide by the requirements of 41 C.F.R. §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in

employment qualified protected veterans and individuals with disabilities.

10. **State Consultant Services Reporting.** State Finance Law Sections 8 and 163 require that state contractors annually report certain employment information to the contracting agency, the Department of Civil Service and Office of the State Comptroller. State contractors are required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the State contractor. In furtherance of these reporting requirements, Contractor agrees to complete and submit an initial planned employment data report and annual employment report, when and if required.

11. **Freedom of Information Law.** This Agreement is subject to disclosure if a request is made under the New York State Freedom of Information Law (FOIL). If a request for disclosure is made under FOIL for this Agreement or any of Contractor's information, Contractor shall be required to establish that this Agreement and/or its information is entitled to a FOIL exemption from disclosure. In such an event, to the extent permitted by law, SUNY agrees to provide Contractor with notice in accordance with Section 19(e) below.

12. **Compliance.** Contractor shall comply with all laws, rules, orders, regulations, and requirements of federal, state and municipal governments applicable hereto, including, but not limited to, the provisions of Exhibit A (State University of New York Standard Contract Clauses) and Exhibit A-1 (State University of New York Affirmative Action Clauses).

13. **Independent Contractor.** Contractor and its agents or employees or any entity or person acting on behalf of Contractor engaged in the performance of work pursuant to this Agreement shall at all times be deemed to be performing as independent contractors. Contractor hereby covenants and agrees to act in accordance with that status. Contractor and its agents or employees or any entity or person acting on behalf of the Contractor shall neither hold themselves out as, nor claim to be, officers or employees of SUNY and shall make no claim for, nor be entitled to, Workers' Compensation coverage, medical and unemployment benefits, social security, or retirement membership benefits from SUNY.

14. **Governing Law/ Venue.**

a. **Governing Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York, excluding New

York's choice of law principles.

b. Venue. Any dispute arising under this Agreement shall be resolved in a New York court of competent jurisdiction. Contractor agrees to submit itself to such court's jurisdiction.

15. **Contract Documents**.

a. Agreement. The following documents are annexed, incorporated into, and made part of, this Agreement:

- (1) Exhibit A, State University of New York Standard Contract Clauses;
- (2) Exhibit A-1, State University of New York Affirmative Action Clauses (for contracts valued at greater than \$25,000);
- (3) The Agreement;
- (4) The RFP (Exhibit B);
- (5) The Contractor's Response to RFP (Exhibit C) including the Contactor's Financial Proposal, as amended; provided, however, that any of Contractor's standard or additional terms and conditions attached to or referenced in Contractor's proposal shall not be considered part of the proposal, but shall be deemed included for informational purposes only and no such extraneous terms or conditions will be incorporated into this Agreement by this reference; and

b. Order of Precedence. In the event of any inconsistency in or conflict among the document elements described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the order set forth above.

c. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and all previous communications between the parties, whether written or oral, with reference to the subject matter of this Agreement are hereby superseded.

16. **Waiver**. The failure of a party to enforce or comply with a provision of this Agreement shall not be deemed a waiver of any such provision unless such waiver is in writing and signed by such party.

17. **Severability**. If any provision of this Agreement is held to be illegal

or invalid for any reason by a court of competent jurisdiction, then such illegality or invalidity shall not affect the remaining portions of the Agreement unless it would prevent accomplishment of the objectives and purposes of the Agreement.

18. **Amendment/ Modifications**. No amendment or modification of this Agreement shall be valid unless it is in writing and signed by both parties.

19. **Additional Terms and Conditions**

a. **Site and Software; License**. As part of the Software, SUNY will be provided membership access to the password-protected website for Contractor's Student Success Collaborative as described in the Agreement ("Site"). During the term of the Agreement (and subject to its terms), Contractor grants SUNY a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable license to access and use the Software via the Site through use of the unique user identifiers provided to SUNY ("Identifiers"), solely for purposes of (a) creating and viewing analysis and reports based on the SUNY Data, and (b) obtaining other information made available through the Software.

Contractor and its suppliers reserve the right to update or enhance the Software at any time provided, however, that no such update(s) or enhancement(s) materially change the technical or functional specifications provided for in the RFP and RFP Response.

b. **SUNY Data**. SUNY shall provide or make available to Contractor SUNY Data as required pursuant to the Agreement. SUNY acknowledges and agrees that Contractor exercises no control whatsoever over the content of such data or other information that SUNY so supplies to be used in connection with the Software.

c. **Authorized Users**. SUNY shall only allow its employees and authorized Personnel to access and use the Software as "Authorized Users", solely in accordance with the terms of the Agreement. SUNY shall, and shall use commercially reasonable efforts to ensure that its Authorized Users shall, solely use the Software for the benefit of the SUNY site specified in the RFP and solely for SUNY's own internal operations. SUNY shall not, and shall use commercially reasonable efforts to ensure its Authorized Users do not, (a) use the Software in

any manner or for any purpose that violates any law or regulation, or any right of any person, including, without limitation, intellectual property rights, or (b) modify, alter, reverse engineer, decompile, or disassemble the Software. For purposes of this Section 19, "Personnel" means a party's officers, directors, trustees, employees and agents.

d. Connectivity. Unless specifically provided for in this Agreement, as between SUNY and Contractor, SUNY is solely responsible, at its own cost and expense, for acquiring, installing and maintaining all connectivity equipment, hardware, software and other equipment as may be necessary for it and its Authorized Users to connect to and use the Site and Software.

e. Confidentiality.

(1) Confidentiality of Contractor's Materials. The Contractor's Materials (as defined below) are confidential to Contractor and its suppliers, if any. Thus, SUNY shall not disseminate to, or permit the use of, and shall take reasonable precautions to prevent such dissemination or use of, Materials by any of its Personnel to any third party. SUNY shall not remove from the Materials any confidential markings, copyright notices and other similar indicia therein and shall not create any derivative works thereof. Notwithstanding the foregoing, SUNY may disclose the Materials to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that subject to applicable law including FOIL, SUNY shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (y) to establish a party's rights under the Agreement, including to make such court filings as it may be required to do.

(2) Confidentiality of SUNY Data. Contractor will use any information it creates, receives, maintains or transmits on behalf of SUNY ("SUNY Data") only for the purpose of fulfilling its duties under this Agreement and will not share SUNY Data with, or disclose it to, any third party without the prior written consent of SUNY, except as required by the Agreement or as otherwise required by law. For purposes of this Agreement, the parties agree that SUNY Data shall not include, and Contractor shall have no obligations with respect to, any information which (i) is or becomes within the public domain through no act of Contractor, (ii)

was in the possession of Contractor prior to its disclosure or transfer, (iii) is independently developed by Contractor, and (iv) is received from another source without any restriction on use or disclosure. SUNY agrees that Contractor may collect aggregated statistical data regarding SUNY's use of the Software and provide such aggregated, de-identified statistical performance data to third parties.

f. Use of Trademarks in Membership List. Contractor may use SUNY's name, with prior written consent from SUNY, on a list of members in Contractor's Student Success Collaborative programs.

g. Warranties. Contractor represents and warrants that (a) it will provide the Software in a professional and workmanlike manner; (b) any software or other products provided pursuant to this Agreement will conform to the technical and functional specifications made available to SUNY and provided for in the RFP and RFP Response; and (c) Contractor has the right and authority to provide the Software, perform the included services, and grant any software licenses provided for herein. SUNY represents and warrants that (a)(i) its provision of SUNY Data and (ii) its and its Authorized Users' receipt of and access to the Software (including making SUNY Data and other data and information available through the Software) will not violate any of its obligations to third parties or violate any applicable laws, and (b) it has obtained all necessary third party consents and authorizations to provide the SUNY Data and for such SUNY Data to be used in the manner contemplated by the Agreement, including consents or authorizations pursuant to FERPA. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE AND/OR MATERIALS AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES. THE SOFTWARE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS AND CONTRACTOR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

h. Limitations on Liability. In no event will a party or its Personnel be

liable to the other party and/or its Personnel for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to the Services, the Materials or the Agreement. In addition, Contractor will not be liable in respect of the following: (a) any decisions made by SUNY as a result of the performance of the Software or as a result of use of the Software by any person using one of the Identifiers, or in reliance upon any of the Materials, or (b) SUNY's misuse of the Software, Materials or other data provided to SUNY in connection with the Services. SUNY agrees that neither Contractor nor its Personnel will be liable to SUNY for any claims, liabilities, or expenses relating to the Software, Materials, and/or the Agreement for an aggregate amount in excess of the fees paid by SUNY to Contractor pursuant to the Agreement during the twelve (12) month period before the claim, liability or expense arose, except to the extent (i) resulting from Contractor's bad faith or intentional misconduct; (ii) resulting in personal injury, death, or damage to real property or tangible personal property; (iii) arising from Contractor's indemnification obligations with respect to infringement under this Agreement; or (iv) Contractor's breach of its confidentiality obligations under this Agreement.

i. Ownership. Contractor is authorized to use SUNY Data only to the extent expressly authorized in this Agreement. As between the parties, Contractor owns all right, title and interest in and to the research, research results, tools, methods, analyses, reports, or other materials or information relating to the Software (including, without limitation, any such materials based on or incorporating SUNY Data, except for the SUNY Data therein) (collectively, "**Materials**"), the know-how, techniques or procedures used or acquired in creating the Materials or performing and/or providing the Software, and any derivative works of any of the foregoing. Notwithstanding anything to the contrary in the Agreement, unless otherwise expressly agreed by the parties in a separate writing, all suggestions, solutions, improvements, corrections, and other contributions provided by SUNY regarding the Software and/or any Materials shall be owned by Contractor, and SUNY hereby agrees to take reasonable steps requested by Contractor to document any such rights to Contractor. Except as stated in this Section 19, no right, license, permission or interest of any kind in the Software or Materials is intended to be given, transferred to or acquired by SUNY by the Agreement. SUNY is authorized to use such items only to the extent expressly authorized in the Agreement. Upon termination of the

Agreement, SUNY's rights to and its use of the Software and Materials shall promptly cease, except that SUNY shall continue to be able to use any Materials provided to SUNY prior to the expiration of the term of the Agreement to the extent the Materials include SUNY Data. Notwithstanding the foregoing, SUNY may keep and use copies of the Materials in its institutional records to the extent needed for purposes of internal decision-making and/or in accordance with its internal record-keeping policies.

20. **Revisions to Data Security.**

a. With respect to Section 10(a), Data Privacy, subsection (i) of the General Terms and Conditions (Section 6) of the RFP, the parties acknowledge and agree that Contractor does not create any information for SUNY.

b. With respect to Section 10(A), Data Privacy, subsection (vi) of the General Terms and Conditions (Section 6) of the RFP, the parties acknowledge and agree that Contractor will comply with the Gramm-Leach-Bliley Act and Federal Trade Commission's Safeguards Rule only to the extent applicable.

c. With respect to Section 10(B), Data Security, subsection (i) of the General Terms and Conditions (Section 6) of the RFP, the parties acknowledge and agree that (i) rather than three times a year, Contractor will conduct regular third party vulnerability assessments on a commercially reasonable basis, in line with generally recognized industry standards; and (ii) Contractor does not receive credit card information from SUNY and thus compliance with PCI DSS is not applicable.

d. With respect to Section 10(B), Data Security, subsection (ii) of the General Terms and Conditions (Section 6) of the RFP, the parties acknowledge and agree that in the event of actual breach, Contractor will coordinate with SUNY in order for SUNY to provide any legally-required notice to affected parties.

e. With respect to Section 10(C), New York Information Breach and Notification Requirements of the General Terms and Conditions (Section 6) of the RFP, the parties acknowledge and agree that (i) Contractor does not create any information for SUNY; and (ii) Contractor shall be liable for the costs associated with breach only to the extent caused by Contractor's breach of this Agreement, or the breach of this Agreement by its agents, officers, employees, or subcontractors.

f. With respect to Section 10(F), Data Portability of the General Terms and Conditions (Section 6) of the RFP, the parties agree to fix the typographical error as follows: “Contractor agrees to do whatever is reasonable and necessary to facilitate the orderly and professional transfer of the Services and SUNY Data upon the expiration or termination of the Contract to SUNY or a SUNY Institution, or to whatever subsequent vendor SUNY may select to provide similar services on SUNY’s behalf.”

21. **Revisions to Service Level Agreement.** The parties agree that Section 2 (Exclusive Remedy) of Attachment 6 (Service Level Agreement) is replaced in its entirety with the following:

“2. Exclusive Remedy.

Contractor will use commercially reasonable efforts to correct any material problems in the Services, including any failure to satisfy the Uptime Commitment. In the event that Contractor fails to satisfy the Uptime Commitment for a given month, SUNY’s sole and exclusive remedy will be to receive a service credit equal to the following percentage of the monthly fees for the Services for the stated uptime:

| | |
|--------------|------|
| 99% to 99.8% | 10% |
| 97% to 99% | 15% |
| 94% to 96.9% | 25% |
| 92% to 93.9% | 50% |
| 90% to 91.9 | 75% |
| Below 90% | 100% |

In no event will the service credit exceed the monthly fees paid by SUNY for the Services. SUNY acknowledges and agrees that if the remedies set forth in this section are applied, any failure of Contractor to meet the requirements in this SLA will not constitute a breach of the Agreement.”

No other writing occurs on this page. It remains intentionally blank.

Contract Number: T022018
Agency Code: 28190 (3320222)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Agency Certification

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

Contractor Certification

"All information provided to the College with respect to State Finance Law §§139-j and 139-k and Tax Law 5-a is complete, true and accurate."

EAB GLOBAL, INC.:

**STATE UNIVERSITY OF NEW YORK
COLLEGE AT GENESEO:**

By: _____
Anne Hahn
Executive Director

By: _____
Rebecca E. Anchor
Director of Purchasing & Central
Services

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Director of Purchasing & Central
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ACKNOWLEDGEMENT BY CORPORATION

DISTRICT OF COLUMBIA)
COUNTY OF _____) SS.:

On this _____ day of _____ 2019, before me personally came _____ to me known, who being duly sworn, did depose and say that he/she resides in _____; that he/she is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public