REPRESENTATIVE AGREEMENT

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

# Engagement of Contractor.

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

# Obligations of Contractor.

The Contractor:

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

# Obligations of University.

The University shall:

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

# Compensation.

The University shall pay the Contractor a professional service fee of $3,400.00 per student (a) whose application the Contractor submitted to the University; (b) who enrolls in the University; and (c) and who pays his/her student bill in full for two or more semesters not to include the summer term.

The service fee will be payable in two installments; the first $1,700.00 payment after the student’s first semester bill has been paid in full, and the second $1,700.00 payment after the student’s second semester bill has been paid in full. The Contractor shall invoice the University at the close of the University’s refund period for students listing the names, dates enrolled, and reference numbers of the students. Payment will be due within 30 days after receipt of original invoice.

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

1. a student recruited by the Contractor who withdraws from his or her academic program within 30 days after commencement of the academic program;
2. a student recruited by the Contractor who is accepted by the University but is not granted a visa; or
3. a student recruited by the Contractor who is eligible to receive Title IV program funds under the Higher Education Act of 1965, as amended.

# Expenses.

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

# Insurance Responsibility.

# 6.1 Upon request, Contractor will provide to University, written evidence that it maintains liability insurance in an amount that is commercially reasonable.

6.2 University is not responsible for providing personal liability or medical insurance covering students.

# Indemnification.

# The Contractor shall, during and after the terms of this Agreement, indemnify the University, The Texas A&M University System, their regents, officers, agents and employees, from all liability, loss, damages, costs, or expenses which are sustained, incurred, or required arising out of the actions or negligence of the Contractor in the course of performing under this Agreement, including breach of any part of this Agreement.

# Independent Contractor Status

# The Contractor and its associates are independent contractors and not employees, agents, joint ventures, or partners of the University. The Contractor may not bind the University or represent itself as the University’s agent for any purpose or allow any personnel of Contractor to do so except as specifically authorized in this Agreement, and then only for the limited purpose stated in such authorization. This Agreement does not create or establish the relationship of employer and employee between the University and Contractor and neither Contractor nor Contractor personnel are entitled or eligible, by reason of this contractual relationship, to participate in any benefits or privileges given or extended by the University to its employees. Contractor is not an employee for state and federal tax purposes.

# University Marks.

Contractor may not use any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with the University (the “University marks”) without the prior written approval of the University in each case. The University retains all copyrights, trademark rights and other intellectual property rights to the University marks and all promotional and related materials. The Contractor may not use any colorable imitation of the University marks, or any variant form (including variant design forms, logos, colors, or type styles/fonts) of the University marks not specifically approved by the University or use the University mark, or any confusingly similar mark or name, as a corporate or trade name. The Contractor may not at any time do or cause to be done any act or thing challenging, contesting, impairing, invalidating, or tending to impair or invalidate any of the University’s rights in the University marks.

1. **Confidentiality.**

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

1. **Codes of Ethics.**

The Contractor shall follow the NAFSA Association of International Educators *Code of Ethics*\* NAFSA’s Statement of Ethical Principles,\*\* and AIRC’s *Best Practices in International Recruitment* (based on NASFA’s Statement of Ethical Principles).*\*\*\**

\*\*<http://files.eric.ed.gov/fulltext/ED376760.pdf>

\*\*<http://www.nafsa.org/About_Us/About_NAFSA/Leadership_and_Governance/NAFSA_s_Statement_of_Ethical_Principles/>

\*\*\*<https://airc.membershipsoftware.org/files/5_2%20version%20Booklet%20Final_AIRC%20Baseline%20and%20Best%20Practice%20Guidelines_2016(3).pdf>

1. **Term.**

This Agreement is effective on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and continues for three (3) years unless terminated in accordance with Section 13. This Agreement may be renewed for additional one-year terms if mutually agreed to by the Parties and shall not exceed a total duration of five (5) years including all extensions and renewals.

# Termination.

## Either Party may terminate this Agreement at any time by giving the other Party 60 days prior written notice.

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

## Upon termination of this Agreement, the Contractor shall:

(1) Submit all applications and fees from prospective students received up to the termination date to the University; and

(2) Immediately cease use of the University marks and any advertising, promotional or other material supplied by the University that incorporates the University marks and return all such material to the University by certified mail.

# Notices.

Any notices required or permitted under this Agreement will be deemed given (a) three business days after it is sent by certified or registered mail, return receipt requested, (b) the next business day after it is sent by overnight carrier, (c) on the date sent by email transmission with confirmation of transmission and receipt, if sent during the recipient’s normal business hours and if not, on the next business day, or (d) on the date of delivery if delivered personally, an in each case, addressed to the intended recipient at the address below or such other address as the intended recipient may specify in writing:

For the University: For the Contractor:

Texas A&M University-Corpus Christi \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

attn: Director, International Students Services attn:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

6300 Ocean Drive, Unit 5780 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Corpus Christi, Texas 78412-5731 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: contracts@tamucc.edu Email:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

With an electronic copy to:

Texas A&M University – Corpus Christi

attn: Contracts Administration

Email: [contracts@tamucc.edu](mailto:contracts@tamucc.edu)

# General Provisions.

## Assignment and Subcontracting. The Contractor may not assign this Agreement or any of its duties or obligations under this Agreement without the prior written consent of the University (which can be withheld at its discretion). The Contractor must not subcontract to any person the performance of any of its obligations under this Agreement without the prior written consent of the University (which can be withheld at its discretion).

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

## Governing Law. The substantive laws of the State of Texas (and not its conflicts of laws principles or statutes) govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates. Venue for any claim arising out of or relating to this Agreement or any of the transactions it contemplates is in Nueces County, Texas.

## Dispute Resolution. The Contractor shall use 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, to attempt to resolve any claim for breach of contract made by the Contractor that cannot be resolved in the ordinary course of business. The Contractor shall submit written notice of a claim of breach of contract under this chapter to the Contracts Administration office of the University, who shall examine the Contractor’s claim and any counterclaim and negotiate with the Contractor in an effort to resolve the claim.

## Public Information. **(1)** Contractor acknowledges that the University is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. **(2)** Upon the University’s written request, Contractor will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to the University in a non-proprietary format acceptable to the University. As used in this provision, “public information” has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which TAMUS has a right of access. **(3)** Contractor acknowledges that the University may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code. **(4)** The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and Contractor agrees that the Agreement can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

1. Force Majeure. Neither party will be in breach of its obligations under this Agreement or incur any liability to the other party for any losses or damages of any nature whatsoever incurred or suffered by that other party if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure event (as defined below), except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure event had not occurred.  “Force Majeure event” is defined as: 1) acts of God; 2) war; 3) act(s) of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strike(s); 9) loss or shortage of transportation facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 11) interruptions by government or court orders (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction; 13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemic(s), pandemic(s), or other national, state, or regional emergency(ies); and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the party whose performance is affected and which by the exercise of all reasonable due diligence, such party is unable to overcome.  Such excuse from performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform its obligation(s).  Written notice of a party’s failure or delay in performance due to Force Majeure must be given within a reasonable time after its occurrence and must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). For the avoidance of doubt, the COVID-19 pandemic and any governmental changes or closures related thereto shall be deemed Force Majeure events, even to the extent reasonably foreseeable by either party as of the effective date of this Agreement.

## Execution and Modification. This Agreement is binding only when signed by both Parties. This Agreement may be amended or supplemented only by a written agreement signed by both Parties.

## Severability. Each provision of this Agreement is severable. If any provision is rendered invalid or unenforceable by statute or regulation or declared null and void by any court of competent jurisdiction, the remaining provisions will remain in full force and effect if the essential terms of this Agreement remain valid, legal, and enforceable.

## Waiver. The failure of either Party to enforce any condition or part of this Agreement will not waive that condition or part, nor shall it forfeit any rights to future enforcement thereof.

j. Prohibition on Contracts with Companies Boycotting Israel. To the extent that Texas Government Code, Chapter 2271 applies to this Agreement, Contractor certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement.  Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

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

l. Verification Regarding Boycotting Energy Companies. To the extent that Section 2274.002, Texas Government Code applies to this Agreement, Contractor certifies (1) does not boycott energy companies and (2) will not boycott energy companies during the term of this Agreement.

m. Verification Regarding Discrimination Against Firearm Entities and Trade Associations. To the extent that Section 2274.002, *Texas Government Code* applies to this Agreement, Contractor certifies (1) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate against a firearm entity or firearm trade association during the term of this Agreement.

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

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

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

## q. Delinquent Child Support Obligations. Pursuant to Section 231.006, Texas Family Code, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

## r. Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, any payments owing to the Contractor under this Agreement may be applied directly toward certain debts or delinquencies that the Contractor 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.

## s. Loss of Funding. Performance by the University 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, the University may issue written notice to the Contractor and terminate this Agreement. The Contractor acknowledges that appropriation of funds is beyond the control of the University.

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

## u. State Auditor’s Officer. 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. The Contractor shall cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. The Contractor shall include this provision in all contracts with permitted subcontractors.

v. Limitations. Contractor acknowledges that the University is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on the University’s property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney’s fees; dispute resolution; indemnities; and confidential information. Terms and conditions relating to these limitations will only be binding on the University to the extent permitted by the Constitution and the laws of the State of Texas.

**Entire Agreement**. This Agreement constitutes the entire agreement between the Parties as to its subject matter and supersedes any prior agreement or understanding, written or oral, between the Parties with regard to that subject matter. The Parties may execute other contracts, but those will not change or alter this Agreement unless expressly stated in writing.

The Parties have executed this Agreement as of the last dates set forth below.

**Texas A&M University-Corpus Christi** **[Insert Contract Name]**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Clarenda M. Phillips, Ph.D. Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Provost & VP for Academic Affairs Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Federal Tax ID No.:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Recommended by:**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Derek Yu

Director, International Student Services

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