



## LEAD GENERATION SERVICES AGREEMENT

This **LEAD GENERATION SERVICES AGREEMENT** (this “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2017 (the “**Effective Date**”), by and between EduSearch Network, Inc., doing business as ESN Interactive (“**ESN**”), and \_\_\_\_\_ (“**Company**”).

**WHEREAS**, Company owns and controls one or more websites aimed at individual end users interested in learning about career training schools, including vocational training programs, continuing education schools and other educational institutions (collectively, “**Schools**”);

**WHEREAS**, ESN wishes to obtain from Company, and Company wishes to provide to ESN through its websites, valid leads located in the United States and Canada who are interested in learning about Schools, and for ESN to direct such leads to its clients, in accordance with the terms and conditions of this Agreement;

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties agree to the following terms and conditions, which set forth the rights, duties and obligations of the parties:

### 1. **Definitions.**

In addition to the definitions appearing elsewhere in this Agreement, when used in this Agreement, the following terms shall have the following meanings:

**1.1. “Applicable Law”** means all international, federal, state and local laws, rules and regulations, including without limitation, the Family Educational Rights and Privacy Act and its implementing regulations, and the Higher Education Act and the regulations promulgated thereunder, CAN-SPAM Act, and any other laws or regulations governing the incentive compensation of persons engaged in student recruiting by or on behalf of post-secondary educational institutions.

**1.2. “Client Branding”** means the trademarks, trade names, business names, logos and other branding features and characteristics of Clients.

**1.3. “Client Guidelines”** means the guidelines, restrictions and requirements required by Clients, which are applicable to the content and features of the Company Sites and Webpages on which EduSearch Results are displayed.

**1.4. “Client(s)”** means the School(s) or other advertising agencies representing School(s) who has contracted with ESN to generate and produce Valid Leads for such schools.

**1.5. “Company Sites”** means the websites owned and controlled by Company, identified on Exhibit A, on which the EduSearch Plugin will be installed and from which Leads will be generated.

**1.6. “EduSearch Network Platform”** (“EduSearch Platform” or “Platform”) means all elements of ESN’s affiliate program, which includes the EduSearch Network Vendor Plugin, EduSearch Widget, EduSearch Results & EduSearch Network Vendor Portal.

**1.7. “EduSearch Network Vendor Plugin”** (“EduSearch Plugin” or “Plugin”) means ESN’s software plugin, described in Exhibit A, which, when installed on



Company Sites, permits Users of such Company Sites to conduct Search Queries, which generates and displays EduSearch Results on such Company Sites, and which thereafter permits end users to input their information and data in the User Information Form in order to produce a Lead.

**1.8. “EduSearch Network Vendor Portal”** means the website where Company can log in with a username and password to access the configuration pages of the EduSearch Plugin and view reports relating to vendor performance.

**1.9. “EduSearch Network Vendor Score”** shall have the meaning set forth in Section 5.

**1.10. “EduSearch Query” (“Query”)** means a search request initiated either by a) an End User entering search parameters directly into the EduSearch Widget or b) an End User navigating to a Company Webpage which dynamically generates EduSearch Results based upon the parameters of the specific EduSearch Plugin configured for the aforementioned page, in response to which (in either case) EduSearch Results provided by ESN will be displayed on the specific webpage of the Company Site.

**1.11. “EduSearch Results”** means a listing of one or more Clients generated by the EduSearch Plugin in response to a Search Query.

**1.12. “EduSearch Widget” (“Widget”)** means the search box or other search functionality of the EduSearch Plugin through which a User can initiate an EduSearch Query.

**1.13. “Intellectual Property Rights”** means any and all rights existing from time to time under patent law, copyright law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law and any and all other intellectual property and proprietary rights.

**1.14. “Lead”** means information provided by a User of a Company Site via the EduSearch Plugin.

**1.15. “Valid Lead”** means a Lead generated through the EduSearch Plugin via a Company Site which contains the valid and accurate information described on Exhibit A about the individual User inputting and providing such information, and which does not fulfill any of the invalid lead criteria described in Exhibit A.

**1.16. “Lead Generation Services”** means the services provided by Company to ESN, as described in this Agreement, pursuant to which Leads are generated on Company Sites via the EduSearch Plugin.

**1.17. “Term”** shall have the meaning set forth in Section 6.

**1.18. “URL”** means a uniform resource locator.

**1.19. “User”** means an individual end user of any Company Site.

**1.20. “User Information Form” (“Form”)** means the page generated by the EduSearch Plugin after a User selects an item from the EduSearch Results which permits such User to provide additional information to produce a Lead. The User Information Form is specific to one Client.

**1.21. “Webpage”** means any page on the World Wide Web and any other content accessible over the Internet.

## **2. Obligations of Company.**

**2.1. Installation of EduSearch Plugin.** Company will install the EduSearch Plugin on each of the Company Sites, configure the Plugin and notify ESN that the Plugin is operational and working properly on each of the Company Sites.

**2.2. Client Requirements.** Company will comply with all Client Guidelines,



as may be modified from time to time with respect to the content and features of the Company Sites and Webpages on which EduSearch Results are displayed. Additionally, Company will comply with all additional restrictions, terms and conditions required by Clients with respect to EduSearch Results (including with respect to the Client Branding included within such EduSearch Results), and with respect to Leads generated and forwarded to such Clients. ESN will communicate such Client Requirements and additional restrictions, terms and conditions to Company, who shall promptly thereafter comply therewith.

**2.3. Company Sites.** Unless otherwise agreed by ESN in writing, Company shall own and control each Company Site and each Webpage on which the EduSearch Results are displayed and will not authorize or permit the display of EduSearch Results on any Webpage not owned and controlled by Company. ESN shall not be required to pay Company with respect to any Leads originated from any site or webpage that is not owned and controlled by Company.

**2.4. URLs Displaying EduSearch Results.** Company will maintain an up-to-date list (and provide to ESN promptly after request by ESN for such list) of all URLs of Webpages on which EduSearch Results are displayed, and provide such list to ESN promptly upon request by ESN.

**2.5. Restrictions.** Company shall not (nor permit any third party) to:

- 2.5.1. Generate any Leads through any telephone communication.
- 2.5.2. manipulate any data provided by any User in the data fields of the Widget or the User Information Form;
- 2.5.3. input any data for any User on, or otherwise pre-populate any, data fields of the Widget or the User Information Form;
- 2.5.4. permit the generation of any Lead through automated means;
- 2.5.5. redirect any User away from the Widget or the EduSearch Results on any Company Site;
- 2.5.6. prevent the display of EduSearch Results;
- 2.5.7. display EduSearch Results on any blank Webpages, parked Webpages, chat rooms, Forums or other Webpages with similar functionality, on any Webpages which display job listings or any other Webpages deemed ineligible by ESN in its reasonable discretion.
- 2.5.8. attempt to access, use, copy, store or cache any data provided by Users on the Widget or the User Information Form;
- 2.5.9. permit any third party to frame the EduSearch Results;
- 2.5.10. display the EduSearch Results on any Webpage other than the Webpage of the Company Site on which the Search Query was initiated by the User;
- 2.5.11. display within any portion of any Company Site any hate-related or violent content or any other material, products or services that violate or encourage conduct that would violate applicable laws or any third-party rights, except for content provided by Users of the Company Site;
- 2.5.12. display on any portion of any Company Site any pornographic, or adult content; misleading (i.e., content that makes promises relating to salary, job placement or hireability) content; or, obscene, profane, illegal, defamatory or violent content;
- 2.5.13. distribute, or allow to be distributed, from any Company Site, any spyware or other application that covertly gathers user data and transmits it through the User's Internet connection ("Spyware"), unless the User has given his or her informed consent to



install the Spyware prior to the installation process and except for data (i) reasonably gathered in connection with services provided to such Users, or (ii) that is not associated with or later linked to personally identifiable information;

2.5.14. distribute, or allow to be distributed, from any Company Site, any adware or other application that (i) causes advertising to pop-up as a new window (over or under the active window) on the User's computer or device either randomly or based on the User's activity on the Company Site or (ii) is used to distribute Spyware ("Adware"), unless the User has given his or her informed consent to install the Adware prior to the installation process;

2.5.15. display on any Webpage on which the EduSearch Results are displayed any content which violates or misappropriates any Intellectual Property Rights of any third party; or

2.5.16. otherwise engage in conduct that is malicious, deceptive, misleading or illegal on or from any Webpage on any Company Site.

### 3. **License to Company.**

**3.1. License to EduSearch Plugin and EduSearch Results.** ESN hereby grants to Company, during the Term, a limited, non-exclusive, non-assignable, non-sublicenseable, revocable license to: (a) use and install the code for the EduSearch Plugin, in object code format, in the form provided by ESN to Company on the Company Sites; and (b) display the EduSearch Results in response to a Search Query on the Webpage of the Company Site on which the Search Query was initiated by a User either by using the Widget or navigating to a webpage on the Company Site that has the Plugin installed and active.

**3.2. Restrictions.** Company will not, and shall not have the right to: (i) modify, adapt, translate or prepare derivative works of the EduSearch Plugin or EduSearch Results; (ii) decompile, reverse engineer, disassemble or otherwise attempt to derive source code or other underlying algorithms of the EduSearch Plugin or any other intellectual property, technology, software, materials or documentation of ESN or its licensors used in generating the EduSearch Results; (iii) distribute, transfer, re-sell, rent, lease, lend, or otherwise provide the EduSearch Plugin or EduSearch Results to third parties or use the EduSearch Plugin for timesharing or service bureau purposes; (iv) remove, obscure, or alter any copyright notice, trademarks or other proprietary rights notices affixed to or provided as a part of any EduSearch Plugin or EduSearch Results; or (v) otherwise use the EduSearch Plugin in any manner not expressly permitted under this Agreement. ESN and its licensors reserve all rights (including all Intellectual Property Rights) not expressly granted to Company under this Agreement.

**3.3. Modifying Company Sites.** In the event Company desires to modify or augment the list of Company Sites, it must obtain the prior written approval of ESN.

**3.4. Nonexclusive Relationship.** Each party acknowledges and agrees that the rights granted to it and the obligations of the parties to one another are non-exclusive, and that, without limiting the generality of the foregoing, nothing in this Agreement shall be deemed or construed to prohibit each party from participating in similar business arrangements as those described herein with third parties.

**3.5. Scrubbing Leads.** The parties acknowledge and agree that ESN shall have the sole right to verify and validate Leads generated from a Company Site and to subsequently determine whether such Leads will be forwarded to any ESN applicable Client. The parties also acknowledge and agree that each Client reserves the right to accept or reject any Leads (even after such Leads have been determined by ESN to be Valid Leads).

### 4. **Ownership**



**4.1. ESN.** ESN shall own and retain all right, title and interest, including without limitation all Intellectual Property Rights, in and to the EduSearch Plugin (including the Widget), the EduSearch Results, any and all Client Branding included therein, any other software or materials provided by ESN to Company under this Agreement, and any derivative works or enhancements of any of the foregoing, including but not limited to, any other intellectual property, technology, software, materials or documentation of ESN or its licensors used in generating the EduSearch Results (collectively, “**ESN Materials**”). Company shall not acquire any right, title, or interest in and to any ESN Materials, except for the limited use rights expressly set forth in this Agreement. ESN shall own and retain all right, title and interest in and to all information and data of Users it collects and receives via the Widget, Search Result Form or any other manner directly from Users and shall not be required to disclose or share any personally identifiable User information to Company. ESN and its licensors reserve all rights (including all Intellectual Property Rights) not expressly granted to Company under this Agreement.

**4.2. Company.** Subject to Section 4.1, Company and/or its licensors shall own and retain all Intellectual Property Rights in and to any editorial, text, graphic, audiovisual, branding and other content that is displayed on the Company Site(s) and that is not provided by ESN to Company, whether as part of the Widget, EduSearch Plugin, EduSearch Results or otherwise (“**Company Materials**”). ESN shall not acquire any right, title or interest in or to Company Materials, except as provided herein. Company and its licensors reserve all rights (including all Intellectual Property Rights) not expressly granted to ESN under this Agreement.

## **5. Payment**

**5.1. Company Log-In.** During the Term, ESN shall provide to Company access to the EduSearch Network Vendor Portal, pursuant to which Company may obtain up-to-date information about the status of each Lead that was generated on a Company Site via the Platform, including whether the Lead was accepted or rejected. ESN will provide to Company, by the end of the month following the calendar month during which Leads were generated, whether such Lead was determined to be a Valid Lead by such Client and the payout amount for that particular Valid Lead.

**5.2. EduSearch Network Vendor Score™.** ESN shall pay Company for all Valid Leads which are generated in compliance with the requirements of this Agreement via a Company Site, in accordance with the terms and conditions applicable to the calculation of such fees, provided that ESN actually receives a fee from the Client to which the Lead was forwarded. Company understands and agrees that the amount of fees payable to Company for each Valid Lead will be based on the Vendor Score assigned to each Company Website on a site-by-site basis. As used herein, the “**Vendor Score**” is a score which takes into account numerous factors, including without limitation conversion rates; enrollment rates; search rankings; traffic sources; the design, features and functionality of the Company Sites; and the placement of the Widget and EduSearch Results pages within the Company Sites.

**5.3. Payment Terms.** For all Leads determined to be Valid Leads, ESN will pay Company the fees payable to Company, as determined in accordance with Section 5.1, within sixty (60) days following the end of the month during which such Valid Leads were transmitted by ESN to the applicable Client.

## **6. Term and Termination.**

**6.1. Term.** This Agreement will commence upon the Effective Date and continue until terminated by either party in accordance with Section 6.

**6.2. Probationary Period.** During the initial 30 days from the start of this



Agreement, Company will be in a Probationary Period in which lead volume will be determined and controlled by ESN by means of a daily or weekly submitted lead maximum (or “Lead Cap(s)”). Once sufficient lead quality has been established, this Probationary Period will end and Lead Caps will be raised, lowered or removed completely. For the entire duration of this Agreement, ESN reserves the right to alter any and all Lead Caps or reinstitute Lead Caps at any time if lead quality is determined to have decreased.

**6.3. Termination for Breach.** If either party materially breaches any of its obligations under this Agreement, the non-defaulting party, at its option, shall have the right to terminate this Agreement. Notwithstanding the foregoing, ESN shall have the right to immediately terminate this Agreement in its entirety, or at ESN’s option, suspend access granted by the EduSearch Plugin, in the event that Company breaches its obligations under Section 2.5 and 3.2. All rights and licenses granted to Company hereunder shall be terminated during the period of the suspension.

**6.4. Termination for Convenience.** Either party may terminate this Agreement for any reason or no reason at any time.

**6.5. Effect of Termination.** Upon any termination of this Agreement: (a) the licenses granted to Company shall immediately terminate, (b) Company shall immediately cease using the EduSearch Plugin and shall permanently delete or destroy all copies of the EduSearch Plugin in Company’s possession, custody or control. Termination of this Agreement by either party shall not act as a waiver of any breach of this Agreement and shall not act as a release of either party from any liability for breach of such party’s obligations under this Agreement. Neither party shall be liable to the other for damages of any kind solely as a result of terminating this Agreement in accordance with its terms. Either party’s termination of this Agreement shall be without prejudice to any other right or remedy that it may have at law or in equity, and shall not relieve either party of breaches occurring prior to the effective date of such termination. The provisions of Sections 2.5, 4.1, 6.4, 7, 8, 9, 10 and 11 shall survive the expiration or any termination of this Agreement.

## 7. Confidentiality

**7.1. Confidential Information.** Each party understands that the other party has disclosed or may disclose information of a confidential nature including, without limitation, know-how, formulas, processes, ideas, inventions, schematics and other technical, business, financial and product development plans, forecasts, strategies and information (“**Confidential Information**”). In addition, “Confidential Information” includes all information (such as ESN source code) expressly designated as Confidential Information in this Agreement. Any other Confidential Information disclosed in tangible form by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) shall be marked “confidential” or “proprietary” (or words of similar meaning) and all Confidential Information disclosed orally or otherwise in intangible form by the Disclosing Party shall be designated as confidential or proprietary at the time of disclosure. Notwithstanding the foregoing, information that is disclosed in a manner in which the Disclosing Party reasonably communicated, or the Receiving Party should reasonably have understood under the circumstances, that the disclosure should be treated as confidential, whether or not the specific designation “confidential” or any similar designation is used, shall be Confidential Information for purposes of this Section 7.1.

**7.2. Disclosure and Use.** The Receiving Party agrees (a) to hold the Disclosing Party’s Confidential Information in confidence and to take all necessary precautions to protect such Confidential Information (including, without limitation, all precautions the



Receiving Party employs with respect to its own confidential materials but in no event less than a reasonable standard of care); (b) not to divulge any such Confidential Information or any information derived therefrom to any person, except employees, attorneys and other independent contractors in each case who are under an obligation of confidentiality and restricted use who need to know such Confidential Information for purposes authorized under this Agreement; (c) not to make any use whatsoever at any time of such Confidential Information except as authorized under this Agreement; and (d) not to remove or export any such Confidential Information from the country of the Receiving Party except as may be allowed by applicable export laws.

**7.3. Exceptions.** Without granting any right or license, the Disclosing Party agrees that the foregoing restrictions of Section 7.2 shall not apply with respect to information that the Receiving Party can establish (a) is in the public domain and is available at the time of disclosure or which thereafter enters the public domain and is available, through no improper action or inaction by the Receiving Party or any affiliate, agent or employee; (b) was in its possession or known by it prior to receipt from the Disclosing Party without restriction; (c) was rightfully disclosed to it by another person without restriction; or (d) is independently developed by the Receiving Party without use of such Confidential Information.

**7.4. Exclusions.** The Receiving Party may use or disclose Confidential Information to the extent (i) expressly approved by the Disclosing Party in writing and (ii) the Receiving Party is legally compelled to disclose such Confidential Information, provided, however, prior to any such compelled disclosure the Receiving Party shall cooperate fully with the Disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information.

**7.5. Return of Confidential Information.** Upon any termination of this Agreement each party will destroy, or return to the other party, all tangible copies of the other party's Confidential Information and erase all copies in electronic form.

**7.6. Publicity.** The parties agree that any press release or public announcement regarding this Agreement or the transactions contemplated hereby shall be made only after each party hereto has approved in writing the time, form and content of any such information to be disseminated to third parties or the public.

## **8. LIMITED WARRANTY AND DISCLAIMER**

**8.1. THE EDUSEARCH PLUGIN, EDUSEARCH RESULTS AND ANY OTHER SERVICES PROVIDED BY ESN UNDER THIS AGREEMENT ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. ESN EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. ESN DOES NOT WARRANT THAT THE EDUSEARCH PLUGIN, EDUSEARCH RESULTS, COMPANY LOGIN OR ANY OTHER SERVICES PROVIDED BY ESN UNDER THIS AGREEMENT WILL BE UNINTERRUPTED OR ERROR-FREE. COMPANY REPRESENTS AND WARRANTS THAT IT OWNS ALL RIGHTS AND INTEREST IN AND TO THE COMPANY SITES OR OTHERWISE HAS OBTAINED ALL THIRD PARTY RIGHTS AND LICENSES REQUIRED TO OPERATE AND MAKE AVAILABLE THE COMPANY SITES.**

## **9. LIMITATION OF LIABILITY**

**9.1. NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OF USE,**



LOSS OF DATA, INTERRUPTION OF BUSINESS, DOWNTIME, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. EXCEPT FOR BREACHES OF SECTION 7 (CONFIDENTIALITY) OR A PARTY'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT WILL EITHER PARTY'S LIABILITY FOR ANY CLAIM ARISING UNDER THIS AGREEMENT EXCEED AMOUNTS PAID BY ESN TO COMPANY UNDER THIS AGREEMENT WITHIN THE TWELVE MONTHS PRECEDING THE DATE ON WHICH SUCH LIABILITY ARISES. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS SECTION IS AN ESSENTIAL ELEMENT OF THE AGREEMENT AND THAT IN ITS ABSENCE THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT. THIS SECTION IS SEVERABLE AND SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT.

**10. Indemnification**

**10.1. By ESN.** ESN agrees to indemnify, defend and hold Company harmless from and against any and all liability, loss, damage, claim, cause of action or other cost (including, without limitation reasonable legal fees and expenses), arising out of or related to any third-party claim alleging that the EduSearch Plugin, EduSearch Results or any other materials provided by ESN to Company (in the form provided to Company) infringes the U.S. patent, copyright, trade secret or trademark rights of such third party. The foregoing indemnification shall not apply to the EduSearch Plugin, EduSearch Results and any other materials provided by ESN that have been altered, modified, or tampered to the extent such claim is caused by such alteration, modification or tampering.

**10.2. By Company.** Company agrees to defend, indemnify and hold ESN harmless from and against any and all liability, loss, damage, claim, cause of action or other cost (including, without limitation reasonable legal fees and expenses), arising out of or related to: (a) any third-party claim alleging infringement or misappropriation of any U.S. patent, copyright or trademark arising out of or relating to: (i) Company's use of the EduSearch Plugin, EduSearch Results or any other materials provided by ESN outside the scope of this Agreement; (ii) the Company Sites, including any content, feature or other aspect of the Company Site (other than the EduSearch Plugin, or the EduSearch Results which may be displayed within the Company Sites; (iii) any breach by Company of Section 2.5 or Section 3.2 of this Agreement.

**10.3.** The indemnified party shall promptly notify the indemnifying party in writing of any such claim and promptly tender the control of the defense and settlement of any such claim to the indemnifying party at the indemnifying party's expense; provided that failure to give prompt notice will not relieve the indemnifying party from its indemnification obligations hereunder, except to the extent of liabilities that would have been avoided had prompt notice been given; and provided further, however, that the indemnifying party shall not settle any such claim in a manner that imposes any non-indemnified costs or otherwise adversely affects the indemnified party's rights without the indemnified party's prior written consent (which shall not be unreasonably refused or delayed). The indemnified party shall cooperate with the indemnifying party, at the indemnifying party's expense, in defending or settling such claim. The indemnified party may join in defense with counsel of its own choice at its own expense.

**10.4.** The indemnity in this Section 10 sets forth the indemnifying party's sole





and exclusive obligation, and the indemnified party's sole and exclusive remedy, for any claims of intellectual property infringement.

11. **Miscellaneous**

**11.1. Independent Contractors.** Each party is an independent contractor of the other and neither is an employee, agent, partner or joint venturer of the other.

**11.2. Assignment.** This Agreement may not be assigned by either party, by operation of law or otherwise, without the prior written approval of the other party.

**11.3. Notices.** Any notice required or permitted to be given by either party under this Agreement shall be in writing, in English language and personally delivered, sent by certified United States mail (return receipt requested), a reputable private overnight courier service, facsimile transmission or email, to the other party at its address, fax or email address set forth after the signature of each party, or such new address, fax and email as may from time to time be supplied by the parties hereto in accordance with this Section 11.3. Notices will be deemed effective, if personally delivered, on the date of personal delivery; if sent by certified U.S. mail (return receipt requested), two (2) business days after posting; if sent by a private overnight courier service, one (1) business day after dispatch; if sent by facsimile transmission, upon transmission, subject to the sender's facsimile machine confirming the uninterrupted transmission by a transmission report or the recipient confirming by telephone to the sender that the recipient has received the facsimile message; and if sent by email, upon transmission, provided that the recipient acknowledges the receipt of such email.

**11.4. Governing Law and Venue.** This Agreement will be deemed to have been made in, and will be construed pursuant to, the laws of the State of California and the United States without regard to conflicts of law provisions thereof. Any suit or proceeding arising out of or relating to this Agreement will be commenced in the state and federal courts located in Los Angeles County, California and the parties hereby submit to the exclusive jurisdiction of such courts. The parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods.

**11.5. Severability.** If any provision of this Agreement is adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

**11.6. Force Majeure.** Neither party shall be responsible or have any liability for any delay or failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including, without limitation, acts of nature, terrorism, earthquake, fire, flood, embargoes, labor disputes and strikes, riots, war, error in the coding of electronic files, Internet or other network (including without limitation mobile phone network or other telecommunications network) "brownouts" or failures, power failures, novelty of product manufacture or other unanticipated product development problems, and acts of civil and military authorities; provided that such party gives the other party prompt written notice of the failure to perform and the reason therefor and uses its reasonable efforts to limit the resulting delay in its performance.

**11.7. No Solicitation of ESN Clients.** Company acknowledges ESN's Clients are valuable business assets of ESN, and agrees, for the duration of this agreement and for a period of six months thereafter, not to offer, nor to provide, any Lead generation, Lead referral, Lead recruiting or similar services to any Clients of ESN with whom Company did not have a preexisting business relationship prior to the Effective Date.



**11.8. Headings and Presumptions.** The headings contained in this Agreement are for reference and explanatory purposes only and will not affect in any way the meaning or interpretation of this Agreement. As this Agreement is a negotiated agreement, there will be no presumption against any party on the ground that such party was responsible for preparing this Agreement or any part of it.

**11.9. Complete Agreement, Waiver, and Modification.** The parties agree that this Agreement and the attached exhibit, which are incorporated into this Agreement by this reference, constitute the complete and exclusive statement of the mutual understanding of the parties, and supersede and cancel all previous written and oral agreements and communications relating to the subject matter of this Agreement. No waiver, modification or amendment of any provision of this Agreement will be binding against a party unless it is in writing and signed by a duly authorized representative of such party. No such waiver of a breach hereof will be deemed to constitute a waiver of any other breach, whether of a similar or dissimilar nature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date.

<b>Edusearch Network, Inc.</b>	<b>(Company)</b>
By:  Signature	By:  Signature
Name:  Print or Type	Name:  Print or Type
Title:	Title:



For Notices:	For Notices:
<p>Address: P.O. Box 26502 Los Angeles, CA 90042</p> <p>Phone: (323) 337-0600</p> <p>Email: <a href="mailto:vendors@edusearch.com">vendors@edusearch.com</a></p>	<p>Address:</p> <p>Phone:</p> <p>Fax:</p> <p>Email:</p>



**EXHIBIT A**

**Company Sites**

<b>Domains:</b>	<b>Webpages with Active Plugin*:</b>

**\*Please note:** If number of pages exceeds the number of available rows in the table, please attach a separate additional page with complete listing to Exhibit A.

**EduSearch Network Vendor Plugin:**

The Plugin is designed to generate dynamic EduSearch Results according to parameters set by Company. The user interface for configuration of those parameters is accessed through the Network Vendor Portal, to which Company is granted access upon signing agreement.

**Valid Lead Information Requirements:**

- First Name
- Last Name
- Level of Education (must be high school graduate or GED holder)
- Program of Interest
- Phone Number
- Email Address
- Postal Address (must be within the United States and Canada only)
- Additional Custom Questions (as determined based on the Client for which the Lead is generated)

**Invalid Lead Criteria:**

- The lead shares any personally identifiable information with any leads submitted prior to the date and time that the Lead generated via the Company Site was submitted by ESN to the School, regardless of the source of the prior-submitted lead (otherwise known as “Duplicate Lead”).



- The individual to whom the Lead relates resides outside of the United States or Canada.
- Any information in the Lead is false or invalid, as determined by ESN or a Client, in their sole discretion, including any invalid, incorrect or non-functional phone number or email address.
- The Lead has incomplete or missing information.
- The Lead fails ESN's internal verification and/or validation processes, which may be modified by ESN from time to time without any notice or disclosure to Company.
- The Lead is completed or submitted by a minor.
- Any information contained in the Lead can reasonably be determined to be false or profane.
- The Lead does not meet Client-specific criteria or requirements.
- The Lead is submitted to a School that is not active.
- The end user to whom the Lead relates claims that he/she did not request information from the specific School to which the Lead was forwarded.
- The Lead is generated through an incentivized campaign or program, including as a result or in response to promises of rewards or gifts, scholarships, or any form of payment or consideration for providing data to the EduSearch Plugin.
- Lead data is inputted by a party other than the specific user to which the lead data relates.
- The Lead is generated through an automated process, and not by an individual who is in good faith seeking information about Schools.
- The generation of the Lead violates any requirement or restriction in the Agreement or Applicable Law.