

June 6, 2022

Ms. Stephanie Echavarri
Intelimap, Inc.
PO Box 6007,
Gloucester, MA, 01930-4707

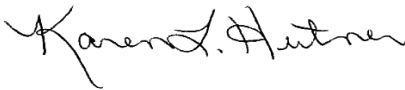
RE: Public Records Request

Dear Ms. Echavarri:

Thank you for your recent Public Records Request. The Massachusetts Public Records Law (M.G.L. Chapter 66 & Chapter 4, Section 7(26)) provides that every person has a right to access public information. This right of access includes the right to inspect or be furnished a copy of any public record within ten (10) business days following the receipt of a request. A state agency is only required to provide records that are in existence and is not required to create a new record based on information in its custody to accommodate a specific request.

Your request, received on May 25, 2022 that stated: "We are seeking all current contracts for Starfish (Retention) Solutions. Please include contracts that fall under Hobsons Starfish and/or EAB Starfish.," has been fulfilled via the attached document.

Sincerely,



Karen Hutner
Interim Director of Institutional Communications/Records Access Officer

EAB_STARFISH MASTER SERVICE AGREEMENT

This EAB Master Service Agreement (this "Agreement") is dated as of 04/22/2021 (the "Effective Date") by and between EAB Global, Inc., ("EAB"), and Quinsigamond Community College ("Organization"). EAB and Organization each hereinafter, individually, a "Party" and, collectively, the "Parties".

1. **Program Order Forms:** This Agreement between Organization and EAB outlines the general terms pursuant to which Organization may purchase Services (as defined below) from EAB in accordance with the Program Order Forms executed by both EAB and Organization (each, an "Order Form"). Each Order Form together with this Agreement, including the Schedules for Services Organization has purchased, shall be deemed to be a separate agreement between Organization and EAB. Each Order Form must be signed by both Organization and EAB to be valid, effective and legally binding and will commence on the date set forth on such Order Form and shall continue in full force for the term as defined on the Order Form (the "Order Form Term").
2. **Fees:** Organization agrees to pay EAB the applicable fees for the Services as set forth on the Order Form by such dates and in such amounts as set forth on the Order Form. Fees shall be paid in U.S. Dollars only. Billing terms are set forth on the applicable Order Form. Payment for the Services will be due not more than thirty (30) days following the date of the invoice. In the event any invoice is not paid when due, Organization shall have fifteen (15) days after EAB provides notice to Organization of such late payment to make such payment in full. If such payment in full is not received by EAB on or before that date, then EAB reserves the absolute right either to delay initiation of or suspend a Service until payment is received in full. Delinquent invoices are subject to an interest of one and one-half percent (1.5%) per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses for collections incurred by EAB. Organization will continue to be charged the applicable fees during any period of suspension. Fees are exclusive of all taxes, levies or duties imposed by taxing authorities, and Organization shall be responsible for payment of all such taxes, levies or duties. **Tax Exempt, please see attached - JE**
3. **Order of Precedence:** In the event of any conflict or inconsistency between the terms of this Agreement and any Order Form, the terms of this Agreement shall control unless the relevant Order Form expressly provides otherwise. No term or provision set forth or cross-referenced in any purchase order or other payment documentation will be construed to amend, add to or supersede any provision of this Agreement or any Order Form.
4. **Services:** The services and products that Organization purchases from EAB pursuant to this Agreement (collectively, the "Services") shall be set forth on a fully executed Order Form. Services may also include, without limitation (i) any of the following that may be delivered by EAB to Organization in connection with the Services: training manuals, training materials, best practice documents, implementation and process documents, product manuals, product presentations, product websites, demo sites, product videos, screen shots and microsites/landing pages, and (ii) any upgrades, modifications, improvements, enhancements, extensions and other changes to the Services developed by EAB (collectively "Enhancements") which are generally made available to other customers of EAB, provided that such Enhancements shall not include new modules, components or major extensions of functionality for which EAB charges a separate fee to existing customers for the Services for such modules, components or extensions.

With respect to any package or bundle of EAB's services or products sold or subscribed to by Organization, Organization shall not be entitled to any refund, clawback, substitute, credit, rebate or replacement for any component or portion of such package or bundle which Organization chooses not to use, implement or exploit. Organization acknowledges that Services may be delayed if Organization fails to submit materials as outlined on the Order Form. In such case, EAB is not obligated to extend the end date of this Agreement or applicable Order Form. Lack of Organization response or an untimely response will be deemed Organization approval. Unless expressly set forth in a writing signed in advance by EAB, EAB does not endorse, sponsor, advocate or have an association with any third party.

5. **Permitted Use:**
 - a. **Organization's Use of Services:** Organization is authorized to use the Services solely for the internal purposes of Organization and only within the school or department of Organization specified in each applicable Order Form. Only



**Massachusetts
Department of
Revenue**

**Form ST-2
Certificate of Exemption**

Certification is hereby made that the organization herein named is an exempt purchaser under General Laws, Chapter 64H, sections 6(d) and (e). All purchases of tangible personal property by this organization are exempt from taxation under said chapter to the extent that such property is used in the conduct of the business of the purchaser. Any abuse or misuse of this certificate by any tax-exempt organization or any unauthorized use of this certificate by any individual constitutes a serious violation and will lead to revocation. **Willful misuse of this Certificate of Exemption is subject to criminal sanctions of up to one year in prison and \$10,000 (\$50,000 for corporations) in fines.** (See reverse side.)

QUINSIGAMOND COMMUNITY COLLEGE
670 W BOYLSTON ST
WORCESTER MA
01606

EXEMPTION NUMBER E
042-547-053
ISSUE DATE
01/02/90
CERTIFICATE EXPIRES ON
NONE

NOT ASSIGNABLE OR TRANSFERABLE

COMMISSIONER OF REVENUE

NAVJEET BAL

Organization's authorized users may use and access the Services by and on behalf of Organization. Organization shall not otherwise use, share, copy, access or allow access to the Services. Organization's subscription is non-exclusive, terminating, revocable, non-transferable and non-assignable for the applicable Order Form, subject to full payment by Organization. Organization shall neither directly nor indirectly (i) sell, assign, lease, license, disclose, grant access to or otherwise transfer the Services or any copy to any other party; (ii) copy the Services, modify the Services or create derivative works; or (iii) attempt to adapt, decipher, reverse translate, decompile, disassemble or otherwise reverse engineer, reconstruct or discover any source code or underlying ideas, algorithms, processes know-how or other related technology of the Services, unless permitted by law, in which case Organization shall give written notice to EAB as far in advance as practicable and to meet Organization's legally recognized needs. All rights not expressly granted to Organization in this Agreement are reserved by EAB and its licensors.

- b. **Use of Organization's Name:** Organization agrees to allow EAB to use Organization's name and logo for the purpose of indicating Organization is a customer of EAB without indicating any endorsement of the Services provided. Organization may not use EAB's name and/or logo in any manner or for any purpose without EAB's prior written approval.
6. **Term:** The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue up to and until the expiration or termination of the last of all Order Forms.
7. **Termination:** Except as expressly provided in this Section 7, in no event shall either Party be permitted to terminate unilaterally this Agreement or any Order Form prior to its expiration.

 - a. **Termination for Breach:** In the event that either Party materially breaches any obligation, representation or warranty under this Agreement, the non-breaching Party may terminate this Agreement in its entirety or, at the non-breaching Party's option, the non-breaching Party may unilaterally terminate the relevant Order Form in connection with which such breach has occurred, provided that in either case such breach has not been cured within thirty (30) days after the breaching Party's receipt of a written notice of such breach from the non-breaching Party.
 - b. **Termination for Insolvency:** In the event that either Party (i) ceases to function as a going concern or to conduct operations in the normal course of business or (ii) has a petition filed by or against it under any state or federal bankruptcy or insolvency laws which petition has not been dismissed or set aside within sixty (60) days of filing, the other Party may terminate this Agreement and any Order Forms upon written notice to the insolvent Party of intent to terminate.
 - c. **Duties Upon Termination:** Upon termination or expiration of this Agreement, all Order Forms shall automatically and immediately terminate and Organization shall cease all use of the Services set forth in the Order Forms and shall (i) cease accessing such Services and logging into such Services; (ii) remove any URLs for the Services or links to the Services from Organization's websites or other materials produced by or for Organization; and (iii) return or destroy any documents or other products provided by EAB (and all copies, including electronic copies) relating to such Services including, without limitation, all training materials, data sheets, working papers and screen shots of the Services. EAB shall have the right at any time following termination or expiration of this Agreement or any Order Form to utilize any chosen feature—automated or otherwise—for preventing further use of the Services. Organization acknowledges that EAB utilizes features which automatically cease the operability of certain Services at the termination or expiration of an Agreement or Order Form. Termination of this Agreement or any Order Form shall be without prejudice to the obligations of EAB and Organization existing at the time of termination including, but not limited to, Organization's obligation for payment in full of fees and other monies then due to EAB, nor shall it prejudice those obligations and limitations which by their nature and meaning survive termination. If any Order Form is terminated by Organization due to a breach by EAB pursuant to Section 7a above, EAB shall provide Organization with a pro-rata refund of any fees pre-paid for unused remainder of the applicable Order Form Term. This pro-rata refund shall be less any applicable costs of implementation and support incurred by EAB in connection with providing such Services. In the case of termination for any other reason (other than as set forth in Section 11), there shall be no refunds for Services provided and all future payments for Services shall remain due and payable as agreed by EAB and Organization.

8. **Warranties:** Organization represents and warrants that any data, information, applications or other materials that Organization provides to EAB are owned by Organization and/or licensed for use by Organization and by EAB for all uses contemplated by this Agreement. EAB represents and warrants that it will perform the Services in a timely and professional manner, in conformance with generally accepted industry standards. THE ABOVE ARE THE ONLY REPRESENTATIONS AND WARRANTIES CONCERNING THE SERVICES, AND EAB AND ITS THIRD-PARTY LICENSORS, SUPPLIERS AND VENDORS EXPRESSLY DISCLAIM ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, TIMELINESS, COMPLETENESS, RESULTS AND IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EVEN IF EAB OR ITS THIRD-PARTY LICENSORS, SUPPLIERS OR VENDORS HAVE BEEN INFORMED OF SUCH PURPOSE, OR ANY REPRESENTATIONS AND WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING or USAGE OF TRADE. THE SERVICES MAY INVOLVE DATA TRANSMISSION OVER THE INTERNET AND, AS SUCH, EAB DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. SIMILARLY, AS THE DATA BEING MANAGED BY EAB ORIGINATES FROM ORGANIZATION'S USERS, NEITHER EAB NOR ANY OF ITS THIRD-PARTY LICENSORS, SUPPLIERS OR VENDORS MAKES ANY WARRANTY AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES. NO INDIVIDUAL OR AGENT OF EAB IS AUTHORIZED TO ALTER OR EXCEED THE REPRESENTATION AND WARRANTY OBLIGATIONS OF EAB AS SET FORTH HEREIN.
9. **Limitation of Liability:** THE LIABILITY OF EAB, AND ORGANIZATION'S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES FOR ANY CLAIM OF ANY KIND WHATSOEVER WITH RESPECT TO THE SERVICES, REGARDLESS OF THE LEGAL THEORY, OR THE DELIVERY OR NON-DELIVERY OF THE SERVICES, SHALL NOT BE GREATER THAN THE FEES ACTUALLY PAID BY ORGANIZATION TO EAB HEREUNDER IN CONNECTION WITH THE SERVICES AT ISSUE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH SUCH CLAIM ACCRUED. UNDER NO CIRCUMSTANCES WILL EAB OR ANY OF ITS THIRD-PARTY LICENSORS, SUPPLIERS OR VENDORS BE LIABLE TO ORGANIZATION FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (EVEN IF EAB OR ANY OF ITS THIRD-PARTY LICENSORS, SUPPLIERS OR VENDORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) INCLUDING, BUT NOT LIMITED TO, COMPENSATION, REIMBURSEMENT OR DAMAGES ON ACCOUNT OF THE LOSS OF PRESENT OR PROSPECTIVE PROFITS OR COMMITMENTS, WHETHER MADE IN THE ESTABLISHMENT, DEVELOPMENT OR MAINTENANCE OF BUSINESS REPUTATION OR GOODWILL, FOR LOSS OF DATA, COST OF SUBSTITUTE SOFTWARE, COST OF CAPITAL, AND THE CLAIMS OF ANY THIRD PARTY, OR FOR ANY OTHER REASON WHATSOEVER. FOR PURPOSES OF CLARIFICATION, NO EAB SUBSIDIARY SHALL HAVE ANY LIABILITY FOR ANY CLAIMS MADE BY ORGANIZATION RESPECTING THE SERVICES. ORGANIZATION'S SOLE RECOURSE WITH RESPECT TO ANY CLAIMS ARISING OUT OF THE SERVICES SHALL BE AGAINST EAB IN ACCORDANCE WITH, AND SUBJECT TO, THE TERMS AND LIMITATIONS IN THIS AGREEMENT.
10. **Indemnification:** To the extent permitted under Massachusetts law, and subject to the terms and limitations in this Agreement, each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party, and its respective officers, directors, employees, shareholders, legal representatives, agents, successors and assigns (collectively, the "Indemnified Parties"), from and against any damages, liabilities, costs and expenses (including reasonable attorneys' and professionals' fees and court costs) relating to or arising out of (i) any third-party claims based on a claim that any data, information, applications or other materials provided to the Indemnified Party, if any, infringe any intellectual property right of a third party or (ii) any breach of any warranty or covenant under this Agreement by the Indemnifying Party, provided that the Indemnified Parties (a) provide prompt written notice of the claim to the Indemnifying Party; (b) provides sole control of the defense and settlement of the claim provided that the Indemnified Parties may not settle or defend any claim unless it unconditionally releases the Indemnifying Parties of all liability; (c) provides the Indemnifying Party with all reasonably available information and assistance; and (d) has not compromised or settled such claim without the Indemnifying Party's prior written consent.

In no event will the obligations of EAB to indemnify, defend and hold harmless Organization pursuant to this Section 10 apply to any claim which arose from (i) a use of the Services by Organization which was not in accordance with the terms of this Agreement or the applicable Order Form; (ii) a modification to the Services not consented to in advance and in writing by EAB; or (iii) use of a version of the Services which is not the most current version of such Services provided to Organization.



QUINSIGAMOND

Community College

“No Board of Trustees, or agents thereof, of any Community College of this Commonwealth, has the authority, statutory or otherwise, to enter into an indemnification or hold harmless agreement on behalf of a Community College of this Commonwealth. Further, pursuant to amended Article 62 Section 1 of the Massachusetts Constitution, and applicable Massachusetts case law, the Commonwealth (Quinsigamond Community College) is prohibited from indemnifying or holding harmless, in any manner, any individual, or any private association, or any corporation which is privately owned and managed. Where the party to a contract with the Commonwealth (Quinsigamond Community College) is not an individual, private association, or a corporation which is privately owned and managed, the Commonwealth (Quinsigamond Community College) can indemnify or hold harmless such party only upon a two-thirds vote of each House of the Massachusetts Legislature.

In the event of the repeal of amended Article 62, Section 1 AND the enactment of statutory authority authorizing a Board of Trustees, or agents thereof, of a Community College of this Commonwealth, to enter into an indemnification or hold harmless agreement on behalf of a Community College of this Commonwealth, the parties agree to the terms of the following paragraph(s) to the extent that these terms are consistent with such statutory authority”

EAB shall have no indemnification obligation, and Organization shall indemnify, defend and hold EAB harmless pursuant to this Agreement, for claims arising from any alleged infringement related to the combination of the Services with any of Organization's or any of Organization's licensors' products, services, hardware or business processes, provided such use was not authorized or directed by EAB in writing.

11. **Infringement Remedy:** If in EAB's reasonable judgment, any part of the Services is or may become subject to an intellectual property infringement claim or other claim, EAB may at its sole option either secure for Organization the right to continue using the relevant Services or replace or modify the relevant Services to make it non-infringing without incurring a material diminution in performance or function. If neither of the foregoing is in EAB's judgment reasonably available, EAB may discontinue the availability of the relevant Services, and Organization shall upon notice from EAB return to EAB any related documentation and any copies of the relevant Services hosted by Organization, and EAB shall provide Organization with a pro-rata refund of any fees pre-paid for the unused remainder of the applicable Services as set forth in the applicable Order Form. This pro-rata refund shall be less any applicable costs of implementation and support incurred by EAB in connection with such Services.
12. **Intellectual Property:** Organization acknowledges that, as between Organization and EAB, all right, title and interest in the Services including any and all copyrights, patent rights, trade secrets, trademarks, service marks, trade names and any other statutory or common law intellectual property or other proprietary rights related to the Services are owned by EAB or EAB's subsidiaries, third-party licensors, suppliers or vendors. Organization shall obtain no intellectual property ownership regarding the Services and hereby assigns to EAB any enhancement of the Services generated in the course of this Agreement. Organization will not, at any time, do or omit to do anything which is likely to prejudice EAB's or any of EAB's subsidiaries', third-party licensors', suppliers' or vendors' ownership of any intellectual property rights in the Services or any component. Organization will not remove, suppress or modify in any way any proprietary marking, including any trademark or copyright notice, on or in the Services or any component.
13. **Confidentiality:** Confidential Information shall include information that is confidential, nonpublic, competitively sensitive, private or proprietary in nature, labeled "Confidential" or "Proprietary" (or similar wording), or identified orally as such, or that the Party receiving the Confidential Information (the "Receiving Party") should otherwise reasonably construe as confidential under the circumstances. Without limitation, the Services, information about business operations, vendors, customers or student personal information shall be deemed Confidential Information.
 - a. **Nondisclosure and Nonuse:** Each Receiving Party agrees (i) not to use or disclose to any third party the Confidential Information disclosed to it by the other Party ("Disclosing Party") for any purpose other than as contemplated by this Agreement and (ii) to protect the Disclosing Party's Confidential Information with at least the same degree of care it uses to protect its own Confidential Information, but at a minimum to use commercially reasonable efforts. Except as otherwise provided by law, neither Party shall disclose the terms of this Agreement to any third party; provided, however, that either Party may disclose the terms of this Agreement to its professional advisers or to any potential investor or acquirer of a substantial part of such Party's business, provided that such third party is bound by a written agreement or legal duty on terms at least as strict as those set forth in this Section 13 to keep such terms confidential.
 - b. **Ownership:** Each Disclosing Party represents and warrants that any data, information, applications or other materials that it provides to the Receiving Party is owned by the Disclosing Party or licensed for use by the Disclosing Party and by the Receiving Party only for all uses contemplated by this Agreement.
 - c. **Exceptions to Confidentiality:** The confidentiality obligations described above shall not apply to Confidential Information to the extent that the Receiving Party receiving such Confidential Information can prove through written evidence that the Confidential Information (i) was lawfully received by the Receiving Party from a third party free of any obligation to keep it confidential; (ii) is or becomes publicly available, other than by breach of Receiving Party of its obligations to the Disclosing Party; (iii) is independently developed without any reference to the Confidential Information, as evidenced by contemporaneous written records of the Receiving Party; or (iv) is required to be disclosed by law, regulation or court order provided that with respect to any of the foregoing exceptions, to the extent permitted by applicable law or court

process, the Receiving Party will give the Disclosing Party notice as soon as practicable prior to disclosure of Confidential Information that is claimed to be subject to an exception.

- d. **Notice:** The Receiving Party will notify the Disclosing Party as soon as practicable in the event the Receiving Party learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the Disclosing Party may reasonably request, at the Disclosing Party's expense, in any litigation against any third party to protect the Disclosing Party's rights with respect to the Confidential Information.

14. **Compliance with Law: To the extent permitted under Massachusetts Law** - Each Party shall adhere to all applicable laws and regulations relating to the use of data including, without limitation, all restrictions relating to the privacy of any personally identifiable information or other information. Organization agrees that it is solely responsible for any permissions needed to share personally identifiable information with EAB.

- a. **Local Laws and Export Control:** The Services provide service and use software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control, and other U.S. agencies. Organization acknowledges and agrees that the Services shall not be used, and none of the underlying information, software or technology may be transferred or otherwise exported or re-exported to Afghanistan, Cuba, Iraq, Iran, Libya, Myanmar, Sudan or any other countries to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Services, Organization represents and warrants that it is not located in, under the control of, or a national or resident of an Embargoed Country or a Designated National. Organization agrees to comply strictly with all U.S. export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required. Services may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. EAB makes no representation that the Services are appropriate or available for use in other locations. If Organization uses Services from outside the United States, Organization is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the content contrary to United States law is prohibited.
- b. **Family Educational Rights and Privacy Act ("FERPA"):** In the event Organization is subject to the provisions of the Family Educational Rights and Privacy Act ("FERPA") and provides Student Data to EAB, the Parties agree as follows:

"Student Data" is, without limitation, any student personally identifiable information as defined by the FERPA and other applicable regulations that has been collected for or provided in connection with the Services. Organization appoints EAB as a "school official" as that term is used in FERPA, 34 CFR §99.31(a)(1)(i)(B) and as interpreted by the Family Policy Compliance Office and determines that EAB has a "legitimate educational interest," for the purpose of carrying out its responsibilities under this Agreement.

EAB acknowledges that it shall be bound by all relevant provisions of FERPA, including to operate under the direct control of Organization with respect to Organization's Student Data, and agrees that Student Data obtained from Organization by EAB in the performance of this Agreement will not be disclosed to third parties except to fulfill EAB's responsibilities under this Agreement.

15. **Amendment, Modification:** This Agreement may only be modified by a written amendment signed by authorized representatives of both EAB and Organization.
16. **Entire Agreement:** This Agreement, all Order Forms and any amendments thereto, contain the entire agreement between EAB and Organization and EAB and Organization's users with respect to the Services and supersede any prior oral or written understandings of the Parties.

17. **Notices:** All notices, requests and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered personally, or three days after being mailed by registered or certified mail, postage prepaid, addressed to the attention of the individual(s) at the address(es) set forth on the signature page of this Agreement. Such addresses may be changed by a written notice in accordance with this Section 17.
18. **Force Majeure:** Except with regard to payment obligations, neither Party will be liable for any failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or inability to obtain any export or import license or other approval or authorization of any government authority.
19. **Governing Law: To the extent permitted under Massachusetts Law** - This Agreement is governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of laws rules or the United Nations Convention on the International Sale of Goods. Each party irrevocably consents and submits to the exclusive jurisdiction of the state and federal courts situated in the District of Columbia, in connection with any action to enforce the provisions of this Agreement, to recover damages or other relief for breach or default under this Agreement, or otherwise arising under or by reason of this Agreement.
20. **No Implied Waiver:** No failure by either Party to insist upon strict performance of any term or obligation set forth in this Agreement or to exercise any right or remedy under this Agreement shall constitute a waiver of such term, obligation, right or remedy.
21. **Attorneys' Fees:** In the event either Party initiates litigation to obtain payment of monetary obligations or to enforce any other term of this Agreement, the prevailing Party shall be entitled to all costs and reasonable attorneys' fees incurred by the prevailing Party in connection with such litigation.
22. **Independent Contractors:** EAB and Organization are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative or employment relationship between the Parties. Neither Party is an agent or representative of the other or is authorized to make any warranties or representations or assume or create any other obligations on behalf of the other.
23. **Severability:** Should any provision of this Agreement be held invalid or unenforceable, then each such provision shall be automatically reformed so as to be enforceable, or if such reformation is not possible, each such provision shall be automatically terminated.
24. **Assignment:** This Agreement is not assignable by Organization without EAB's prior written consent. This Agreement is binding upon, and inures to the benefit of, the parties and their respective successors and assigns.

SCHEDULE A – Additional Terms and Provisions Applicable to Starfish

1. **Access and Privacy:** – EAB hereby grants to Organization for the term of the Services as set forth on the Order Form a limited, non-exclusive, non-transferable, non-sublicensable, nonassignable, limited right and license to install and use certain adapter software solely for the purpose of connecting Organization to the Services. Organization acknowledges that the Services may include links to third-party features that are governed by their own privacy policies and terms of service and/or terms of use. EAB shall provide periodic updates to such adapter software as EAB deems appropriate, and Organization shall install and use such updates. Access to the Services specified in the applicable Order Form will be by Authorized User IDs issued by Organization within the limit of any Authorized Users band specified in the applicable Order Form. Authorized Users will only access and use the Services through such Authorized User IDs. EAB may rely on any Authorized User ID, instruction or information that meets the Services' automated criteria or which is believed by EAB to be genuine. EAB may assume a person entering an Authorized User ID and password is in fact that user. EAB may assume that the latest email addresses and registration information on file with the Services are accurate and current. When programmed to do so, the Services may take prescribed actions in the absence of receiving proper and complete instructions. Prior to expiration or termination of this Agreement, Organization may utilize features within the Services to retrieve a copy of its student information. EAB maintains a Privacy Policy which is incorporated herein as part of this Agreement and which may be viewed at <https://eab.com/privacy-policy-2/>. EAB reserves the right to modify the Privacy Policy in accordance with the procedure outlined in that policy.
2. **Authorized Users:** For purposes of this Schedule A, an "Authorized User" is defined as any individual who uses or accesses the Services, including a student resident in a course of Organization, alumnus, consortia student registered to take one of Organization's regularly offered courses of instruction, a prospective or visiting student, employee or collaborating researcher of Organization or an Organization employee (solely to the extent any such employee uses the Service for Organization's student success programs). The number of Authorized Users of an Organization is the greater of (i) Organization's published number of students, including full-time and part-time students, prospective, visiting and other students included in the definition of Authorized User in this Schedule A or (ii) the Actual Number of Users (the unique count of student users of the Services as measured during any academic year of the Term). Additional bands of Authorized Users will be priced separately. Organization represents that it has all necessary permissions to permit Authorized Users to share their personal information with EAB.
3. **Increase to Authorized Users:** Organization represents and warrants to EAB that the number of Authorized Users provided to EAB and set forth on the Order Form for the Services is correct and accurate and that Organization will inform EAB in writing of any increase in its Authorized User population at least ninety (90) days prior to the beginning of the Order Form Renewal Term for the Services. In the event that Actual Number of Users exceeds the number of Authorized Users by fifteen percent (15%) or more, Organization will be notified of the need to purchase for an expanded number of Actual Number of Users. EAB will assess additional license fees for the Services for increases in the number of Organization's Authorized Users. In the event of a Organization merger, acquisition or partnership resulting in a substantial increase in the number of Authorized Users, EAB reserves the right to assess additional fees during the Order Form Term for the Services based upon the current Authorized User band.
4. **Data Retention:** Not more than the later of (a) ninety (90) days following the expiration or termination of this Agreement or (b) thirty (30) days following receipt of a written request from Organization, EAB shall delete Student Data. Notwithstanding the foregoing, EAB may retain deidentified Student Data for purposes of developing and improving EAB's educational products and services, demonstrating the efficacy of EAB's products and services including in its marketing, and for adapting and customizing learning as well as other lawful purposes.

SCHEDULE B – Additional Terms and Provisions Applicable to Starfish Professional Services

1. **Professional Services:** – Organization agrees to cooperate in good faith with EAB to ensure that all Professional Services hours (as outlined in the Order Form) are utilized not more than twelve (12) months after the date set forth on the Order Form and Organization acknowledges that a failure to utilize Professional Services within this time frame shall result in a forfeiture of the hours purchased.

Organization may reschedule a private on-site or webinar session that has been previously confirmed by EAB, provided that Organization agrees to (a) notify EAB in writing no fewer than three (3) business days in advance prior to the start of the session; (b) pay costs incurred on Organization's behalf for the session as originally scheduled (including but not limited to any cancellation fees paid to EAB's instructors and, if applicable, travel expenses); and (c) pay travel expenses associated with the session once rescheduled, if applicable. If cancellation of a private or public session is a result of inclement weather resulting in a school closing or delay, Organization is still responsible for paying any costs and travel expenses incurred by EAB on Organization's behalf, however the session will not be considered cancelled by Organization.

EAB reserves the right to cancel or reschedule sessions in its sole and absolute discretion. In the event EAB cancels or reschedules a session, Organization may choose to reschedule, attend another comparable session, or receive a full refund. EAB warrants that each of its instructors and consultants performing such Professional Services shall have the proper skill, training and background to perform in a competent and professional manner.

2. **Organization Responsibilities for Training:** With respect to training, participants must meet the prerequisites set forth for each course to ensure that each session is productive and effective. All trainings are hands-on sessions and require a computer for each participant. Organization must ensure that participants' computers are in good working order, that the appropriate hardware and software necessary to connect to the network provided in the training facility is installed, and that participants know how to connect the computer to a network. Organization must also plan to have no more than fifteen (15) individuals attend a private session at a time to ensure proper student to instructor ratio for effective learning. Organization agrees to work with EAB to ensure that any trainings purchased are conducted not more than twelve (12) months following the date of purchase and Organization acknowledges that a failure to have EAB deliver a session not more than twelve (12) months following the date of purchase shall be deemed a cancellation by Organization.
3. **Organization Responsibilities for Consulting:** With respect to consulting, Organization agrees to the required preparation as outlined by EAB to effectively start the engagement and utilize the services of EAB's consultant. Organization agrees to work with EAB to ensure that all consulting hours purchased are utilized within 12 months from the date of purchase, and Organization acknowledges that a failure to have EAB deliver Professional Services within 12 months from the date of purchase shall result in a forfeiture of the consulting hours purchased.
4. **Payments and Refunds: NET 30 TERMS** - EAB will invoice Organization or a contact designated by Organization for Professional Services at the time of purchase. If applicable, EAB will also invoice Organization for travel expenses incurred by an instructor for any on-site training services and a consultant for any on-site Professional Services. Payments are due in accordance with Section 2 of this Agreement, and all fees for Professional Services are non-refundable except as a result of a request by EAB to cancel or reschedule a training session as described in this Agreement.

SCHEDULE C – Additional Terms and Provisions Applicable to Starfish Data Analytics**1. Definitions:**

- a. **Institutional Data:** Any public data collected about the institution, as well as, without limitation, course offerings, enrollment numbers and aggregate student performance indicators. Institutional Data does not include Student Data.
 - b. **Data Form Requirements:** Required data, elements, formats and lookup tables in order to process data.
 - c. **Submission Schedule:** Required schedule for submitting data to EAB.
 - d. **Data Quality Standards:** Open standards for data quality required for data submissions to EAB.
2. **EAB's License to Organization:** EAB hereby grants to Organization, for the term of the Services as set forth on the Order Form, a limited, nonexclusive, non-sublicensable, nontransferable license to install and use the software, code, tools and applications made available to Organization by EAB under the related Order Form and this Schedule solely for the purpose of (i) generating reports regarding Organization's data and (ii) generating reports regarding comparative benchmarks based on de-identified and aggregated data (e.g. findings about Organization compared to other customers in the SSCoP). EAB provides methods for transfer of data between Organization and EAB and within EAB Services, which may include but not be limited to adapter files, scripts, flat files, data base access or APIs. Certain data transfer methods that Organization requests may incur additional costs beyond base fees depending on the work required to implement and maintain. Such data transfer requests are subject to a separate agreement mutually executed by the Parties.
3. **Organization's License to EAB:** Organization hereby grants to EAB a perpetual, worldwide, nonexclusive, royalty-free license to use, reproduce, copy, distribute, transmit, adapt, modify, create derivative works of
- a. De-identified student success interventions inventoried in EAB tools and platforms, where neither individual students nor institution are identified. If EAB desires to identify Organization publicly in relation to its student success interventions inventoried through EAB tools, EAB must obtain permission from Organization in writing.
 - b. De-identified, aggregated Institutional Data or Student Data provided that no individual student can be identified, and Organization cannot be identified as the provider of specific data.
4. **Student Success Community of Practice (SSCoP):** The SSCoP is a group of Starfish customers collaborating on student success best practices and data standards. Customers connect with each other to share success stories and lessons learned, participate in user groups and conferences, gather for online training, provide product feedback and suggestions, as well as partner on research projects and industry presentation opportunities facilitated through dedicated community portals.
- a. **Organization's License to EAB's Customers in the SSCoP:** Organization hereby grants to participants of EAB's SSCoP a perpetual, worldwide, nonexclusive, royalty-free license to use, reproduce, copy, adapt, modify, create derivative works of student success inventory data submitted through the EAB tools, provided that other SSCoP participants attribute the source of the original intervention to Organization. SSCoP participants have the right to distribute, transmit and use the name of Organization and Organization's submitted student success intervention in participants' communications within their own institutions or with other SSCoP participants. If Organization elects to share a student success intervention inventoried in EAB tools by another participant and the sharing is outside the SSCoP, then Organization must
 - i. first obtain permission from the attributed SSCoP participant in writing,
 - ii. and attribute the source institution and EAB Student Success platform.

For purposes of clarification, EAB shall not be responsible for managing sharing of intervention data beyond the SSCoP, and SSCoP participants alone will be responsible for managing requests among SSCoP participants for intervention sharing. Upon request from Organization, however, EAB will provide a list of primary contacts at SSCoP institutions.

- b. **Organization Data in the SSCoP at Termination:** With regards to Organization's student success inventory data submitted through EAB tools, such data is retained with Organization's identifiers intact after Organization's termination of Services. Student success inventory data that the Organization has explicitly indicated as not sharable via the "Confidential" checkbox when submitted to the intervention in the intervention inventory is not shared with the SSCoP at any time. In the event of Organization termination of Services and Organization requests in writing to destroy Organization's confidential intervention inventory data, identifiers related to "Confidential" information are destroyed, but the de-identified data is retained.
- c. **Research:** To advance the practice of student success, EAB or its authorized designee will from time to time and at its own discretion engage in academic and practical research that leverages the aggregated de-identified dataset. Findings from that research may be shared with or beyond the SSCoP, and the results of such research shall be the sole property of EAB, or if published in journal articles, the shared intellectual property of EAB and the authors.
- d. **Publications:** To facilitate the mission of Organization and to increase the retention and success of at-risk students, participants are encouraged to publish information regarding data models, data definitions, the experiences and reflections of users and research results about Organization's own institution generated from the Services. Each participant will submit any proposed publication and any revised version of any proposed publication to EAB for review prior to submission to any publisher and will remove any information identified by EAB as not approved for publication prior to such submission. A participant may not publish any comparative results for marketing or other purposes without the prior written approval of EAB, which may require the payment of additional fees to EAB.
- e. **Permitted Use of Best Practices and Contributed Works:** Notwithstanding anything to the contrary set forth in agreements previous to this Schedule, best practices identified or provided by EAB to the Organization or participant community during the term of the Services as set forth to the related Order Form may be used and adapted by Organization without restriction and may continue to be used by Organization after termination; and works, including research and other contributions made by Organization to the SSCoP during the term of the Services as set forth in the related Order Form, may be retained by Organization after termination.
- f. **Obligations of Organization:** Organization, as a participant of the SSCoP, shall (i) obtain, and upon request, certify to EAB in writing that Organization has obtained, any and all authorizations from the Organization's Institutional Review Board or other oversight entity that may be required to provide information and data to EAB; (ii) at the direction of the institution based on its intended use of the Services, cause authorized users having access to EAB data, findings or reports to receive appropriate training in human subjects protection; (iii) actively seek to present EAB's reports and findings to appropriate audiences at the Organization and multi-institutional meetings; and (iv) participate with other Organizations to share relevant institution-specific information, actively engage in the evaluation of de-identified Institution and Student Data and share potential uses for predicting student outcomes and improving student success based on the data.

Organization agrees that failure to comply with the Data Form Requirements, the Submission Schedule and/or Data Quality Standards may cause EAB to exclude Organization's data from future database updates and will relieve EAB of any of its obligations under this Schedule.