



- 3.2 Consultant will provide comprehensive administration management of City's Student Loan Employer Contribution Program (the "Program") for Council aides directly with the Mayor and City Council Office.
- 3.3 Consultant shall provide comprehensive management of City's Student Loan Employer Contribution Program (the "Program") for City's non-uniform, Civilian employees, directly with Human Resources, Employee Benefits Division.
- 3.4 All of Consultant's services provided under this Agreement shall be provided, overseen and managed by the following persons:
  - 3.4.1 Mike Kerber, Partner Success Director; and
  - 3.4.2 Jeff Quittman, Program Success Manager.
- 3.5 Description of Services. The services to be performed by Consultant under this Agreement shall consist of the following:
  - 3.5.1 Assist the City in development and implementation of the Program.
  - 3.5.2 Provide a method to evaluate the ongoing effectiveness of the Program.
  - 3.5.3 Take all actions necessary to successfully accomplish the day-to-day administration of the Program once implemented, including but not limited to:
    - 3.5.3.1 Provide to City a template describing the benefit and providing instructions on how to apply for the Program so that City can reach out to its eligible Employees at Program kick-off and to new hires thereafter.
    - 3.5.3.2 Verification of applicant loan eligibility based on criteria established by and stated in the Program.
    - 3.5.3.3 Ongoing management and service for each Enrolled Participant.
  - 3.5.4 Provide monthly reporting/analytics for employer to include but not limited to program participation, types of loans, employee savings, and employer cost.
- 3.6 The Implementation Phase shall consist of the following steps:
  - 3.6.1 Kick-off call – introduce key team members and assess timeline for the Program;
  - 3.6.2 Create and formalize a plan design for the Program;
  - 3.6.3 Develop and launch a communication plan for the Program; and
  - 3.6.4 Set up the initial eligibility file for the Program.
  - 3.6.5 The Implementation Phase shall be completed not later than April 1, 2019.
- 3.7 On a monthly frequency, City of San Antonio will forward to Consultant an eligibility file containing all eligible Civilian employees and Council Aids for the benefit (employees no longer contained in the eligibility file will be de-activated from the benefit).
- 3.8 On the first business day of the month, Consultant will run a benefit eligibility process that determines all benefit eligible employees and the contribution amount for those individuals in conformance with the City of San Antonio plan design.
- 3.9 Not later than the third business day of the month, Consultant will generate and forward electronically to City an invoice that details all employees receiving the benefit, the dollar amount each will receive, and the total amount of benefits for the month.

- 3.10 Not later than the second payroll of the month (as stated in the City's payroll schedule to be provided annually by City), the City will transfer the total amount of benefits for the month to Consultant via ACH.
- 3.11 Not later than the fourth business day after receipt of funds from City, Consultant will run its ledger to breakdown the individual employer contribution payments by loan servicer and lender accounts and forward the monthly benefit for each employee to the loan servicer or lender for each employee's loan(s).
- 3.12 Consultant will send a Contributions Acknowledgement email to each employee who has received an employer contribution payment. This email acknowledges the amount of principal payment by City, the issuer/borrower account to which the contribution was sent and the resulting impact on principal and reduction in interest/duration of the loan(s).
- 3.13 Consultant's Payment Operations team is responsible for all reconciliations and research/resubmission of any employer contribution payments not properly applied in the first payment attempt, and is also responsible for completing the proper application of each payment made during the month.
- 3.14 In the event any employer contribution payments cannot be applied to an employee's student loans, Consultant will apply such amounts to the next monthly invoice described in section 3.9 herein as credits, or, at the direction of City, will be refunded to City by Consultant.
- 3.15 Not later than the last business day of the month, Consultant will submit an electronic version of an imputed income file in an appropriate format as defined by City that contains the employee ID number, amount of benefit each employee received in each month and the aggregate of benefits each employee has received in the calendar year through that month.
- 3.16 The status and all details of the administrative process will be captured and maintained in detail in Consultant's Partner portal for City.
- 3.17 All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall have the right to terminate this Agreement, in accordance with Article VIII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate.

#### **IV. IT SECURITY STANDARDS**

- 4.1 Consultant represents and warrants that it currently uses and will continue to use National Institute of Standards and Technology (NIST) approved encryption technologies to encrypt Sensitive Personally Identifiable Information ("PII") and Confidential Information (as defined herein) at all times, including but not limited to while the Sensitive PII and Confidential Information are: (1) at rest; (2) inside of Consultant's network; (3) in transit; and (4) for any remote access connectivity, including but not limited to, laptops; mobile devices; removable storage; and back-up media.
- 4.2 Consultant represents and warrants that it has implemented and will continue to implement appropriate safeguards to protect Sensitive PII or Confidential Information that are no less rigorous than accepted industry practices (such as NIST 800-53a, ISO 17799/27001, or COBIT or other industry standards of information security, as any or all of the same may be hereafter amended or superseded), and will ensure that all such safeguards, including how Sensitive PII

or Confidential Information is collected, accessed, used, stored, disposed of, and disclosed, comply with applicable data protection and privacy laws, and comply with the terms of this Agreement.

- 4.3 Consultant will at all times during this Agreement maintain logical separation between all Consultant's customers.
- 4.4 Consultant will at all times during this Agreement review all security measures no less frequently than on an annual basis or whenever there is a material change in Consultant's business practices that may affect the security of Sensitive PII or Confidential Information.
- 4.5 Consultant will at all times during this Agreement implement, maintain and utilize appropriate personnel security and integrity procedures and practices.
- 4.6 Consultant will at all times during this Agreement provide appropriate privacy and information security training to its employees and subcontractors.
- 4.7 Consultant will at all times during this Agreement continually identify and assess reasonably foreseeable internal and external threats and vulnerabilities and, at its sole cost and expense, promptly correct all identified security deficiencies or vulnerabilities that may compromise the security of Sensitive PII or Confidential Information.
- 4.8 Consultant represents and warrants that it has properly installed, configured and is running, and will continue to properly install, configure and run, the latest version of an industry accepted firewall operating system and application software products, and maintain updated antivirus software, including without limitation, installing update files as they become available and upgrading the underlying software at least once in each calendar year.
- 4.9 Consultant represents and warrants that its security program does and will continue to comply with all applicable state and federal laws, regulations and rules.
- 4.10 Consultant represents and warrants that the privacy, security and data handling practices adopted and maintained by Consultant are and shall continue to be in effect and consistently applied during the term of this Agreement.

## **V. COMPENSATION TO CONSULTANT**

- 5.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all its services and activities to be performed under this Agreement, City agrees to pay Consultant the following amounts as total compensation:

5.1.1 A One-time Implementation Fee of \$10,000.00, payable upon satisfactory completion, as determined by the Director, of the Implementation Phase as described in Section 3 above. Upon such satisfactory completion, Consultant shall submit an Invoice in that amount to City. The Invoice shall be addressed to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to Assistant Director, Human Resources Department, P.O. Box 839966, San Antonio, Texas 78283-3966. City shall pay said Invoice within 30 days of receipt of same.

5.1.2 During the three (3) year initial term of this Agreement, a Per Active Monthly Fee ("Monthly Fee") will be invoiced by Consultant consisting of the **greater** of \$600.00 or \$4.50 per month per Enrolled Participant. "Enrolled Participant" is defined as a City non-uniform, civilian

employee or City Council aide who establishes a participant account on Consultant's platform, successfully completes Consultant's enrollment application, is confirmed by Consultant to be eligible to receive funds from City under the Program and receives a loan contribution payment from City during the month as a result of the Program. Not later than the 10<sup>th</sup> business day of each month during the initial term of this Agreement, Consultant shall submit an Invoice to City in the amount of the Monthly Fee for such month. Each Invoice shall contain or be accompanied by information specified by the Director regarding the calculation of the Monthly Fee. The Invoice shall be addressed to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to Wanda Heard, Human Resources Department, P.O. Box 839966, San Antonio, Texas 78283-3966. City shall pay said Invoice within 30 days of receipt of same.

5.1.3 If this Agreement is renewed for its first renewal term, the Monthly Fee for the initial term shall be increased by a maximum of three percent (3%), so that the Monthly Fee for the first renewal term shall not exceed \$4.64 per month per active participant. Not later than the 10<sup>th</sup> business day of each month during the first renewal term of this Agreement, Consultant shall submit an Invoice to City in the amount of the Monthly Fee for such month. Each Invoice shall contain or be accompanied by information specified by the Director regarding the calculation of the Monthly Fee. The Invoice shall be addressed to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to Employee Benefits, Human Resources Department, P.O. Box 839966, San Antonio, Texas 78283-3966. City shall pay said Invoice within 30 days of receipt of same.

5.1.4 If this Agreement is renewed for its second renewal term, the Monthly Fee for the first term shall be increased by a maximum of three percent (3%), so that the Monthly Fee for the second renewal term shall not exceed \$4.77 per month per active participant. Not later than the 10<sup>th</sup> business day of each month during the second renewal term of this Agreement, Consultant shall submit an Invoice to City in the amount of the Monthly Fee for such month. Each Invoice shall contain or be accompanied by information specified by the Director regarding the calculation of the Monthly Fee. The Invoice shall be addressed to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to Employee Benefits, Human Resources Department, P.O. Box 839966, San Antonio, Texas 78283-3966. City shall pay said Invoice within 30 days of receipt of same.

- 5.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in 5.1 above. Total payments to Consultant cannot exceed the amount set forth in section 5.1 above, without prior approval and agreement of all parties, evidenced in writing and approved in accordance with Article XV Amendments.
- 5.3 Final acceptance of work products and services described in 5.1.1 above require written approval by City. The approval official shall be Director or her designee. Notwithstanding any contrary provisions in 5.1.1, payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or provision of any goods or services.

## **VI. USE AND OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

- 6.1 All completed or partially completed survey questionnaires and any and all writings, reports, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City ("City Documents"); and no such

writing, document or information shall be the subject of any copyright or proprietary claim by Consultant. Any and all writings, reports, or documents in whatsoever form and character produced by Consultant as work product pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, report, or document shall be the subject of any copyright or proprietary claim by Consultant.

- 6.2 Consultant understands and acknowledges that as the exclusive owner of any and all writings, reports, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. Consultant shall not sell, or otherwise release, or make available to a third party, any information obtained in the course of execution of this Contract.
- 6.3 Solely to the extent necessary to utilize the Services during the Term in accordance with this Agreement, Consultant hereby grants to City a personal, non-exclusive, non-transferable, and non-sublicensable right to access and use the Services, including the website maintained by Consultant through which City provides to its employees the Program (the "Site"), during the Term. City shall have no right to copy the Services or the Consultant Intellectual Property (defined below) on which the Services are based.
- 6.4 Subject to the provisions of Sections 6.1 and 6.2 above, City acknowledges and agrees that Consultant or its licensors are and shall remain the sole and exclusive owners of (A) the Services, including the Site, (B) any and all software, methodologies, tools, specifications, drawings, sketches, models, samples, records, documentation, works of authorship or creative works, ideas, knowledge, data or other materials or content relating to the Services, including the Site (collectively, the "Content"), (C) any and all new Intellectual Property developed by Consultant or on behalf of Consultant, (D) any and all improvements, enhancements, modifications and derivative works of any of the foregoing, and (E) any and all Intellectual Property Rights in any of foregoing (collectively, "Consultant Intellectual Property"). City does not obtain any rights to any of the Consultant Intellectual Property, other than the limited license expressly set forth in this Agreement.
- 6.5 For purposes of this Agreement, "Intellectual Property" or "Intellectual Property Rights" means all inventions and/or works and any and all rights under U.S. and/or foreign patents, trade secrets, know-how, copyrights, and other industrial or intangible property rights of a similar nature; all rights pursuant to grants and/or registrations worldwide in connection with the foregoing and all other rights with respect thereto; all rights under applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all rights under amendments, continuations, divisions and continuations-in-part of such applications; and all rights under corrections, reissues, patents of addition, extensions and renewals of any such grant, registration and/or right.
- 6.6 City shall not, and shall cause its employees not to, take any of the following actions: (i) create or enable the creation of derivative works, modifications, or adaptations of the Services or the Consultant Intellectual Property; (ii) decompile, reverse engineer, disassemble or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats or interface protocols of the Services or the Consultant Intellectual Property; (iii) distribute or disclose the Services or any Consultant Intellectual Property to third parties, except as expressly permitted hereunder to provide the Program; (iv) remove or modify any proprietary marking or restrictive legends placed on the Services or any Consultant Intellectual Property; (v) use any robot, spider,

other automatic device or program or manual process to monitor, copy or reproduce the Services or any Consultant Intellectual Property; or (vi) use the Services or any Consultant Intellectual Property in any manner not expressly set forth in this Agreement or in violation of any applicable law or regulation.

## VII. RECORDS RETENTION

- 7.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as “documents”), and shall make such documents available to the City at its respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.
- 7.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention period.
- 7.3 Consultant shall notify the Director or her designee, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests and that Consultant shall not release documents or information contained in said document without the prior written consent of City.

## VIII. TERMINATION

- 8.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 8.2 Termination Without Cause. This Agreement may be terminated by City without cause upon sixty days advance written notice, which notice shall be provided in accordance with Article IX. Notice. Should City terminate this agreement without cause, Consultant shall be compensated in proportion to the work performed prior to the effective date of termination.
- 8.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article IX. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement.

- 8.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;
- 8.3.2 Any material breach of this Agreement which, in the sole opinion of Director, cannot be cured.
- 8.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 8.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 15 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement.
- 8.4.1 Bankruptcy or selling substantially all of company's assets
- 8.4.2 Failing to perform or failing to comply with any covenant herein required within the time stated
- 8.4.3 Performing unsatisfactorily
- 8.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 8.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within 30 calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.
- 8.7 Within sixty (60) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said sixty (60) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 8.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.
- 8.9 Termination Not Sole Remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.



## IX. NOTICE

- 9.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or 3 calendar days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio  
Attn: Lori Steward

Mailing Address:

P.O. Box 839966  
San Antonio, TX 78283-3966

Street Address:

111 Soledad, Second Floor  
San Antonio, TX 78205

If intended for Consultant, to:

Tuition.io, Inc.  
Attn: Scott Simmons

Mailing Address:

P.O. Box 810  
San Mateo, CA 94401-0810

Street Address:

181 2<sup>nd</sup> Avenue, Suite 560  
San Mateo, CA 94401

## X. PUBLICITY AND USE OF CUSTOMER MATERIALS

- 10.1 Consultant will not make any public announcements, release any information to or authorize or participate in any interview with the media or any other representative thereof, concerning this Agreement and/or the Services, without first obtaining written consent from City signed by the Director. Consultant shall require its employees, agents, and subcontractors to comply with the requirements of this provision. This provision shall survive the expiration or termination of this Agreement.
- 10.2 City shall provide Consultant, as agreed upon by both Parties, with certain information, commentary, presentations, articles, logos, trademarks, structured data, multimedia web content, images, videos, text, branding materials and other materials (the "Customer Materials") for use on the Site, which Consultant will use to customize the Site and the Services for City. City retains ownership of the Customer Materials and grants to Consultant a license to use the Customer Materials in connection with the Site and the Services during the term of this Agreement. Consultant may not use the Customer Materials for any other purpose, including but not limited to advertising and/or marketing purposes, except as expressly authorized in writing by City.

## XI. INSURANCE

- 11.1 Prior to the commencement of any work under the Agreement, Consultant shall furnish copies of a completed Certificate(s) of Insurance to the City's Finance Department, which shall be clearly labeled "Finance Department Organizational Review", in the Description of Operations block of the certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under the Agreement until such certificate and endorsements have been received and approved by the City's Finance Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 11.2 The City reserves the right to review the insurance requirements of this Article during the effective period of the Agreement and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions; or circumstances surrounding the Agreement. In no instance will City allow modification whereupon City may incur increased risk.
- 11.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of the Agreement, and any extension hereof, at Consultant's sole expense, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Worker's Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Technology Errors & Omissions Insurance (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$5,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission related to cyber liability or data breach.

- 11.4 City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by City and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either

of the parties hereto or the underwriter of any such policies). Upon such request by City, Consultant shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

11.5 Consultant agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the City and its officers, employees, and elected representatives as additional insured, by endorsement, as respects operations and activities of, or on behalf of, the named insured and performed under this Agreement with the City, with the exception of the workers' compensation policy;
- Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self- insurance carried by the City of San Antonio for liability arising out of its operations under this Agreement with City; and
  - Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of City.

11.6 Consultant shall notify City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notice not less than 30 days prior to the change or ten (10) days' notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to City at the following addresses:

**City of San Antonio Human Resources Department  
Employee Benefits Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966**

11.7 In addition to any other remedies City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due, to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

11.8 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under the Agreement.

11.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

## XII. INDEMNIFICATION

- 12.1 **Consultant covenants and agrees to: FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Consultant' s activities under this Agreement, including any acts or omissions of Consultant, any agent, officer, director, representative, employee, consultant or subcontractor of Consultant, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 12.2 The provisions of this indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Consultant shall advise the City in writing within 24 hours of any claim or demand against the City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Consultant's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Consultant of any of its obligations under this paragraph.
- 12.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 12.4 Employee Litigation –In any and all claims against any party indemnified hereunder by any employee of Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under worker's compensation or other employee benefit acts.

### **XIII. ASSIGNMENT AND SUBCONTRACTING**

- 13.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.
- 13.2 It is City's understanding and this Agreement is made in reliance thereon that Consultant intends to use the following subcontractors in the performance of this Agreement: Credible Labs Inc. for hosting a student loan refinancing marketplace linking from Consultant's Site. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved in writing by Director prior to the provision of any services by said subcontractor.
- 13.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Director.
- 13.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of Director, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.
- 13.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VIII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

### **XIV. INDEPENDENT CONTRACTOR**

- 14.1 Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

## **XV. CONFLICT OF INTEREST**

- 15.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 15.2 Pursuant to Section 14.1 above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

## **XVI. AMENDMENTS**

- 16.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both the Assistant City Manager and Consultant, and, in the case of amendments increasing the compensation payable to Consultant beyond \$50,000, subject to approval by the City Council, as evidenced by passage of an ordinance.

## **XVII. SEVERABILITY**

- 17.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XVIII. LICENSES/CERTIFICATIONS**

- 18.1 Consultant represents that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

## **XIX. COMPLIANCE**

- 19.1 Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

## **XX. NONWAIVER OF PERFORMANCE**

- 20.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **XXI. LAW APPLICABLE**

- 21.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

## **XXII. LEGAL AUTHORITY**

- 22.1 The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

## **XXIII. PARTIES BOUND**

- 23.1 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

## **XXIV. CAPTIONS**

- 24.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

*Remainder of Page Intentionally Left Blank*

**XXV. ENTIRE AGREEMENT**


25.1 This Agreement constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same is in writing, dated subsequent to the date hereto and duly executed by the parties, in accordance with Article XVI. Amendments.

**EXECUTED** and **AGREED** to as of the dates indicated below, to be effective on the date determined in accordance with Section 2.1 of this Agreement.

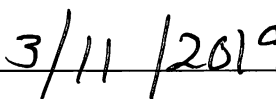
**CITY OF SAN ANTONIO**

**TUITION.io, INC.**

\_\_\_\_\_  
Ben Gorzell, CPA  
Chief Financial Officer

  
\_\_\_\_\_  
Scott Simmons  
Chief Operating Officer and  
Chief Financial Officer

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

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

Approved as to Form:

\_\_\_\_\_  
Assistant City Attorney