

FINAL

BAYLOR UNIVERSITY

and

NORTHEASTERN UNIVERSITY

and

SHANGHAI KAI BO EDUCATION INVESTMENT MANAGEMENT CO., LTD

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ARTICULATION AND CONSORTIUM  
MEMBERSHIP AGREEMENT

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Dated:

2009

**CONFIDENTIAL**

**AGREEMENT**

This Agreement (the "**Agreement**") is entered into effective 2009 (the "**Effective Date**") between Baylor University (the "**University**"), a non-profit corporation of Texas, **Northeastern University** ("**Northeastern**"), a non-profit co-operation of Massachusetts and **Shanghai Kai Bo Education Investment Management Co., Ltd**, a company registered in the People's Republic of China ("**Kaplan**").

**WHEREAS**, the Parties have agreed jointly to develop and manage a multi-component pathways program for Students to begin studies in the PRC and complete them in the United States.

**WHEREAS**, Kaplan will operate the Program and certain of the Consortium Universities will operate Summer Bridge Programs from which Students will be entitled to matriculate into at least one Consortium University.

**WHEREAS**, the Parties are entering into this Agreement with a view to the University becoming a Consortium University and such that, in particular, it may participate in the general consortium governance and management arrangements.

**NOW**, therefore, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound hereby agree as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement, the following terms have the following meanings:

**"Academic Guidelines"** guidelines and procedures for handling academic variance issues and academic appeals;

**"Academic Materials"** the Academic Guidelines, the Assessment Guidelines, the Complaints Procedures, the Framework Document, the Quality Assurance Manuals, the Student Guidelines, and/or the Student Manual;

**"Academic Programs"** such part(s) of the Programs as comprise

	credit bearing courses;
<b>"Academic Year"</b>	the standard academic year for higher education establishments in the PRC, running September to August;
<b>"Admissions Criteria"</b>	the admissions criteria (including a minimum high school GPA and minimum entering English assessment score to be applied by Kaplan in determining whether an applicant has satisfied the requirements to be offered a place on a Program specified in the applicant's Application Form;
<b>"Application Form"</b>	an application form in the form designed by Kaplan and approved pursuant hereto;
<b>"Assessment Guidelines"</b>	the assessment guidelines which will apply in connection with Academic Programs;
<b>"Complaints Procedures"</b>	complaints procedures for those Students wishing to make a formal complaint about any matter which cannot be resolved by informal means;
<b>"Confidential Information"</b>	any and all know how, documentation and information, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, customers, suppliers or methods of one Party and disclosed to or otherwise obtained by another Party in connection with this Agreement;
<b>"Consortium Chair"</b>	Northeastern or such other Consortium University as from time to time replaces Northeastern as consortium chair;
<b>"Consortium University"</b>	the University, Northeastern and any other US university which is from time to time approved as such pursuant hereto and which is party to an agreement equivalent to this Agreement;
<b>"Examiners"</b>	the external examiners appointed in relation to the Academic Programs from time to time;
<b>"Fees"</b>	Program Fees and Placement Fees;

<b>"Focus Areas"</b>	is defined in Clause 5.1;
<b>"Framework Document"</b>	the description of an Academic Program (including the curriculum and how it should be delivered and assessed);
<b>"IFY Program"</b>	such part(s) of the Programs as comprise Kaplan's International Foundation Year program(s); (which include English language and academic skills preparation programs);
<b>"Intellectual Property Rights"</b>	any and all intellectual property rights, including copyright, patents, trademarks, design rights, rights in databases, domain names, topography rights, look and feel, know how and similar rights (whether or not registered or capable of registration and whether subsisting in the US, the PRC or any other part of the world), together with any and all goodwill relating or attached thereto, the right to apply for registration of such right and all extensions and renewals thereof;
<b>"Kaplan Affiliate"</b>	any company which is a member of the group comprising Kaplan, Inc. and its subsidiaries;
<b>"Kaplan Trademarks"</b>	the trademarks relating to Kaplan or any Kaplan Affiliates as may be notified by Kaplan to the University from time to time;
<b>"Marketing Templates"</b>	templates for key marketing materials (e.g. annual brochure, website wireframe);
<b>"Northeastern Summer Bridge Program"</b>	the Summer Bridge Program operated from time to time by Northeastern;
<b>"Party"</b>	the parties to this Agreement;
<b>"Performance Standards"</b>	the University's requirements (including a minimum exiting GPA and minimum allowable grade (as specified for the applicable University Course) and any other applicable minimum course grades and/or performance standards based on entry to specific University Programs notified from time to time by the University for Students progressing to its Summer Bridge Program (if

	any) and therefrom (or, if it does not at such time operate its own Summer Bridge Program, from Northeastern's Summer Bridge Program) to the sophomore year of the relevant University Program;
<b>"Placement Fee"</b>	the fee (including any visa service fee) to be paid by a Student to Kaplan in connection with his or her placement with the University;
<b>"PRC"</b>	the People's Republic of China (excluding Taiwan and the Special Administrative Regions of Hong Kong and Macau);
<b>"Program"</b>	the three term program with a duration of one year comprising the IFY Program and the Academic Program(s), the latter comprising the first two semesters of undergraduate programs with an aggregate duration of 30-45 weeks and carrying 32 course credits in the Focus Areas equivalent (when taken together with the applicable Summer Bridge Program) to a Consortium University's freshman year;
<b>"Program Fees"</b>	the Tuition Fees, registration fees and examination fees to be paid by a Student to Kaplan for his or her participation in a Program;
<b>"Program Materials"</b>	in relation to the Academic and IFY Programs, the program outline, framework document, syllabi, curriculum, work books, text books, examination papers, revision aids, marking schemes, model answers and related materials.
<b>"Quality Assurance Manuals"</b>	the manual(s) which constitute(s) the quality assurance documentation in relation to the Academic Programs;
<b>"Student Guidelines"</b>	any additional regulations and/or guidelines as are from time to time appropriate to be applied in relation to Students during their period of study on Programs;
<b>"Student Manual"</b>	a document, designed to a Kaplan template, given to Students at the time they enrol on a

	<p>Program, which describes, amongst other things, the Program, the assessment pattern and timing and all academic, appeals and other student policies, procedures and regulations which will apply;</p>
<b>"Students"</b>	<p>students enrolled on and participating in Programs with Kaplan;</p>
<b>"Summer Bridge Program"</b>	<p>a summer bridge program aimed at acclimatising Students to US academic life and further improving their English communication skills in a co-hort-based learning environment with a duration of approximately 10 weeks (comprising a College Success Course (i.e. a standardized academic and English language immersion program) and related credit bearing courses carrying up to 13 course credits in the Focus Areas) to be provided by a Consortium University on its US campus between 1 June and 15 August (approximately) each year (and includes the Northeastern and UVM Summer Bridge Program);</p>
<b>"Trademarks"</b>	<p>the Kaplan Trademarks or the University Trademarks (as the case may be);</p>
<b>"Tuition Fees"</b>	<p>the tuition fees (not including any registration fees, examination fees or visa service fees) to be paid by a Student to Kaplan for participation in a Program;</p>
<b>"University Applicant"</b>	<p>an applicant for a Program who has indicated in his/her Application Form that he/she wishes to progress to the University Summer Bridge Program and/or, as applicable, a University Program;</p>
<b>"University Program"</b>	<p>the sophomore and subsequent third, fourth and fifth years of the University undergraduate programs to be provided by the University on its US campus ;</p>
<b>"University Summer Bridge Program"</b>	<p>the Summer Bridge Program (if any) from time to time operated by the University;</p>

**"University Trademarks"**

the trademarks relating to the University as may be notified by the University to Kaplan from time to time; and

**"University Tuition and Fees"**

the tuition and other fees for services (e.g. health center, health insurance, student union, gymnasium) to be paid by a Student to the University for participation in the University Summer Bridge Program and/or a University Program.

**2. THE CONSORTIUM**

- 2.1. The Parties are entering into this Agreement in order to confirm the status of the University as a Consortium University.
- 2.2. Additional US universities may from time to time be added as Consortium Universities in accordance with the membership criteria collaboratively established by the existing Consortium Universities from time to time in agreement with Kaplan. The ultimate decision making authority regarding whether a university may become a Consortium University rests with Kaplan and the Consortium Chair, provided that such persons agree not to make such a determination other than following consultation with the other Consortium Universities following receipt, as applicable, of their input. The maximum number of Consortium Universities will not exceed 6, unless, in consultation with the other Consortium Universities, Kaplan and the Consortium Chair agree to expand that number.
- 2.3. Northeastern agrees to act as Consortium Chair and to fulfil the functions thereof in connection with this Agreement and any other agreements entered into from time to time with any other Consortium Universities (including Northeastern). If Northeastern ceases to be a Consortium University, it will cease to be Consortium Chair and the remaining Consortium Universities will agree with Kaplan which of their number should succeed Northeastern in such role as Consortium Chair. Similar provisions will apply on any successor ceasing to be a Consortium University.
- 2.4. The rights and obligations of the respective Consortium Universities are several and, accordingly, no other such persons will in any circumstances have responsibility or otherwise guarantee the performance of the respective obligations of the other such parties.

- 2.5. The Consortium Universities agree to meet at least bi-annually and periodically as needed in a location to be agreed amongst the Consortium Universities (and in default of agreement on a timely basis as specified by the Consortium Chair). The agenda for any such meetings will be circulated in advance by the Consortium Chair for comment. The Consortium Chair will also promptly circulate minutes of such meetings. Each Party will be responsible for their own costs of attendance.
- 2.6. The consortium model requires that at least one Consortium University accept Students who meet the minimum Performance Standards to be eligible to enrol in the Summer Bridge Program, but who do not meet the criteria for admission to other Consortium Universities. The College of Professional Studies at Northeastern in its degree programs will fulfil this role unless other arrangements are agreed by the Consortium Universities.
- 2.7. The University will establish Program Admissions Criteria for the Programs and Performance Standards for the Programs and the Summer Bridge Program (if it offers a Summer Bridge Program). The Criteria and Standards applying regarding the University as at the date hereof will be submitted to the Enrolment Management Working Group (cf. Clause 2.8) no later than [November 19], 2009.
- 2.8. An Enrolment Management Working Group will be constituted amongst the Consortium Universities and which will be chaired by the Consortium Chair which will seek to develop a set of enrolment management strategies and enrolment processes to be reviewed and approved by the Consortium. The University will co-operate in such process in order to seek to ensure that the same are approved by no later than such date as is agreed between the Parties hereto.
- 2.9. A consortium working group or sub-committee (chaired by the Consortium Chair) will establish an application process and placement service for Students which will ensure timely notification to Consortium Universities and guidance to Students. This working group or sub-committee will be charged with developing clear policies and processes specific to each Consortium University related to, but not limited to, the following issues:
- (a) Student ability to pay: financial documentation; types and locations of forms; expense estimates for students; disclosure of fees, including SEVIS fees; and maintenance of records; and
  - (b) I-20 procurement and issuance; terms of conditional admission; communications processes between all parties, including timelines and



sequence of notification; student procurement of visas; transition of SEVIS records between schools in the US.

- 2.10. If and when required by the Consortium Chair and Kaplan, sub-committees, and/or working groups of the consortium will be formed with each Consortium University and Kaplan represented thereon and with the chair thereof being selected by majority vote of the members.
- 2.11. The Parties recognise the importance of the co-ordination of academic activities in relation to the matters contemplated hereby. Northeastern will appoint and hire a full-time Director, who will be responsible for the day-to-day academic oversight in relation to the matters contemplated hereby and will travel between the US and the PRC regularly. Kaplan will hire a full-time Program Director in PRC who will be responsible for execution and oversight of Kaplan's responsibilities as contemplated hereby.
- 2.12. Each Party will delegate an appropriate staff member with whom the other Parties will liaise in connection with all matters relating to this Agreement.

### 3. TERM

- 3.1. This Agreement will begin on the date hereof and will have a term of 12 months, provided, however, that the Parties may agree in writing to extend this Agreement. The Parties agree that they will work to develop a multiyear extension of the agreement prior to the expiration of this Agreement. If this Agreement is so extended, then either Kaplan or the University may at any time terminate this Agreement during such extension period upon not less than one full Academic Year's prior written notice.
- 3.2. The Parties agree that the first cohort of Students who are University Applicants will commence their studies with Kaplan in [November 2009], with the first progression to study in the US on Summer Bridge Programs taking place in June 2010 and on University Programs taking place in September 2010 (subject in each case as provided herein).
- 3.3. Kaplan and the University may (subject to their mutual agreement thereto) elect to renew this Agreement for a further agreed period (which period will seek to protect the reasonable expectations of Students enrolled at such time). Any decision not to renew must be communicated at least 6 months prior to expiry of this Agreement.

- 3.4. Upon service of any notice of termination of this Agreement for any reason, Kaplan will immediately cease to promote and/or accept Students who wish to progress to the University Summer Bridge Program and/or any University Programs.
- 3.5. In the event of termination of this Agreement for any reason, the University and Kaplan will use reasonable endeavours to ensure that all Students who are then currently enrolled on Programs and who have indicated on their Application Forms a preference for the University Summer Bridge Program and/or University Programs may complete the same.
- 3.6. Each Party's' rights and obligations that are expressly or by implication intended to come into force upon, or to remain in force following, the termination or expiry of this Agreement will remain in full force and effect upon such termination or expiry.

#### **4. CONSORTIUM CHAIR OBLIGATIONS**

- 4.1. The Consortium Chair will be responsible, in collaboration with the other Consortium Universities from time to time, for designing the Academic Program curricula and quality assurance protocols relating to faculty hiring, teaching and student outcomes, which will be required to meet the curricular and quality standards of the Consortium Universities.
- 4.2. The Consortium Chair will also monitor Academic Program quality over time and, in collaboration with the Consortium Universities, develop metrics for assessing program and Student performance. Data regarding such matters will be collected by the Consortium Chair and will be reviewed by the Consortium Universities annually so as to give guidance regarding program improvements and recommendations therefore.
- 4.3. The Consortium Chair will be responsible for developing and providing (in consultation with the Consortium Universities and Kaplan) the Program Materials and Academic Materials relating to the Academic Programs (to the extent not agreed to be prepared by Kaplan itself). Any such preparation will be undertaken at the Consortium Chair's expense unless agreed otherwise amongst the applicable parties.
- 4.4. The Consortium Chair will promptly communicate to Kaplan any revisions, amendments, modifications or new materials which are from time to time to constitute Program Materials and/or Academic Materials (subject as provided in Clause 4.5 below).

- 4.5. Consortium Chair shall make reasonable efforts to consult with Kaplan and the Consortium Universities regarding the content of any Program Materials and/or Academic Materials relating to Academic Programs.. The final form and content of any Program Materials and/or Academic Materials relating to the Academic Programs will be as specified by the Consortium Chair (taking into account Kaplan's reasonable recommendations). The Parties will ensure that the Program Materials and Academic Materials relating to the Academic Programs to be used in connection with the first Academic Year of study on the Academic Programs will be made available in final form by no later than such date as is agreed between the Parties hereto.

## 5. PROGRESSION

- 5.1. Initially the Academic Programs will focus on the following two areas (together the "Focus Areas"):
- (a) Focus Area 1: Business, Social Sciences and Humanities ("BSSH") and;
  - (b) Focus Area 2: Science, Technology, Engineering and Mathematics ("STEM").

Additional Focus Areas may be added from time to time subject to consultation between Kaplan and the Consortium Chair and agreement thereto by the individual Consortium Universities.

- 5.2. The Program will have three entry points prior to the Academic Fall Term (subject to the applicable Admissions Criteria).
- 5.3. Students will earn up to an additional 13 course credits for coursework completed during the Summer Bridge Program. Such coursework will supplement the learning objectives of the Program and, where possible, will satisfy generic distribution requirements for select majors within each Consortium University.
- 5.4. Each applicant will be required to specify in their Application Form the University Program to which they wish to matriculate and will progress to the applicable Summer Bridge Program.
- 5.5. The mission, learning outcomes, course matrix and service obligations constituting the Northeastern Summer Bridge Program will be developed by Northeastern in collaboration with the other Consortium Universities and, upon being adopted, such program will serve as an academic standard for a qualifying Consortium Universities who elect to offer their own versions of the Summer Bridge Program. If and to the extent the Northeastern Summer Bridge Program comprises the only Summer Bridge

Program from time to time offered by any Consortium University, then this will form the default progression route for Students.

- 5.6. Should the University from time to time wish to offer a Summer Bridge Program, then it will consult with Kaplan and the Consortium Chair at least one year in advance thereof, including as regards the content of the credit bearing courses comprised therein. Such Summer Bridge Program must satisfy the requirements of Clause 5.5.
- 5.7. A Student must satisfy the applicable Performance Standards in order to progress to the applicable Summer Bridge Program. Such Student must also satisfy the Performance Standards regarding the applicable Summer Bridge Program in order to progress to the applicable University Program.
- 5.8. The Performance Standards which the University requires for a Student to progress to the University Summer Bridge Program (if any) and/or to the University Programs will be as are from time to time agreed by the University with Kaplan from time to time. The Performance Standards applying as of the first year of Program operation will be submitted to the Enrolment Management Working Group (cf. Clause 2.8) no later than November 19, 2009.
- 5.9. The University may from time to time agree with Kaplan minimum and maximum enrolment goals regarding the University Summer Bridge Program (if any) and/or the University Programs. The Parties note that the aggregate first year enrolment goal of 100 – 150 Students and related progression goal of 80% has been agreed to apply across all the Consortium Universities with respect to the Academic Year 2009/2010. Kaplan and the Consortium Chair will develop a plan gradually to increase such aggregate enrolment to 1,000 Students per Academic Year. Any such increase(s) will take into account the number of Consortium Universities from time to time. The above goals and others agreed from time to time are for illustrative purposes only and will not be a basis for termination of this Agreement or otherwise give rise to any penalties or default circumstances should such goals not be met.
- 5.10. Students who satisfy the applicable Performance Standards and who specified the University Summer Bridge Program as their preferred progression route in their Application Form will receive a credit from the University with respect to study on the relevant Academic Programs and will be entitled to progress, subject to meeting University financial, behavioural and immigration requirements, to the University Summer Bridge Program and (subject to satisfaction of the Performance Standards in relation to the University Summer Bridge Program) to the sophomore year of study at the University on its US campus indicated in such Student's Application Form.

- 5.11. In the event that the University does not from time to time operate a University Summer Bridge Program, then a Student who satisfied the Performance Standards applicable to any other Summer Bridge Program and who indicated in their Application Form ( ) a preference to progress to a University Program will, subject to meeting University financial, behavioural and immigration requirements, be entitled to progress to the applicable University Program, subject to having satisfied the University's applicable Performance Standards on the Program, the Summer Bridge Program and any additional Progression Standards specified by the University applicable thereto. Such Students will thereafter receive credit from the Consortium University on whose Summer Bridge Program such Student studied and will be entitled, subject to meeting financial, behavioural and immigration requirements to progress to the sophomore year of study with the University on its US campus on the applicable University Program indicated in the Student's Application Form.
- 5.12. In the event this Agreement is extended beyond the initial term, and the University plans to close admissions to to any University Program in which places have been reserved or conditionally assured to Students as contemplated hereby, the University will notify Kaplan and the Consortium Chair in writing at least one year before and the University will ensure that affected Students are placed in comparable degree programs of the Student's choice upon satisfaction of the applicable Performance Standards and Summer Bridge Program.

## **6. UNIVERSITY OBLIGATIONS**

- 6.1. The University agrees to help establish and maintain the Programs as contemplated hereby.
- 6.2. The University agrees to co-operate in the marketing of the Program in the PRC.
- 6.3. The University agrees to establish guidelines for admissions to the University and to specific programs. The University agrees to work with the other Consortium Universities in order to ensure that every eligible Student who successfully completes the Program and a Summer Bridge Program with the necessary minimum academic standards and English skills will be admitted to at least one Consortium University.
- 6.4. The University will issue conditional admission letters to qualified Students seeking to progress to the University Summer Bridge Program (if any) and/or an University Program in accordance with the guidelines from time to time agreed by the Consortium Universities with Kaplan and the Consortium Chair.

- 6.5. The University agrees to participate in consortium business and to advise the Consortium Chair on matters of curricular development (including the Summer Bridge Program and conformance pathways between institutions).
- 6.6. If and to the extent a Student progresses to the University as provided herein, the University will in return for the University Tuition and Fees paid by the applicable Student to the University provide a full range of student services to such Student on the same basis as that to which other international students of the University are entitled.
- 6.7. The University will assist Students who are University Applicants with immigration requirements as reasonable for entry into the United States. Students will be required by law to obtain an I-20 prior to matriculation into the University Summer Bridge Program (if any) and/or University Programs. Kaplan agrees to ensure that Students are informed of these requirements prior to application for a Program. All Kaplan employees participating in any Program will be trained by the University regarding the importance of direct and timely communication with the University with respect to SEVIS and other immigration requirements prior to interacting with Students. Requests for assistance from applicable Students with respect to immigration matters will be directed to the University and Kaplan staff must keep the University apprised of any communications with such applicable Students that may impact on the applicable Students' immigration status or upon the University's compliance with SEVIS and other immigration regulations.
- 6.8. If a Student who has indicated a preference to progress to the University Summer Bridge Program and/or (subject to successful completion of any Consortium Summer Bridge Program) any University Program meets or exceeds the Performance Standards, such Student may submit all necessary paperwork to University to begin the I20 issuance process. Kaplan staff will assist Students in preparing the necessary request form and supporting financial documentation as required by federal regulations for issuance of the I-20 form, which will then be provided to the Student's intended school of matriculation and/or provider of the student's Summer Bridge program. Provided that the admission process is complete and supporting documentation is in order as indicated above, the University will, within five business days from the receipt of the completed I-20 request packet, provide an initial notification of its intent to issue the I-20 form. If the answer is "yes," the University will send, via express mail, the I-20 form to the Student or to Kaplan China, so that the student may apply for an F-1 student visa to enter the U.S. The University will issue the I-20 form within a reasonable time-frame from the date of the initial notification

based on the mutually-agreed upon administrative timelines between Kaplan and the Consortium Universities. In the event that a student attends a Summer Bridge at Consortium University and then transitions to another Consortium University, the Summer Bridge provider will transition the I-20 accordingly.

- 6.9. The University agrees and acknowledges that, while Kaplan will direct applicable Students who are University Applicants to the appropriate visa authorities in the PRC on as timely of a basis as is reasonably practicable in the context of the timing of their studies and likely timing of successful completion, Kaplan does not have any obligation to ensure that the relevant Students either secure the necessary visas and/or elect to continue with study at the University. University similarly has no obligation to ensure that the relevant Students secure the necessary visas.
- 6.10. If, for whatever reason, a Student who is a University Applicant decides not to progress to further study with the University in the United States, then the University agrees, this notwithstanding, to issue on a timely basis a confirmation of the relevant credits (i.e., a transcript), which will be awarded to that individual for the purpose of their continuing their studies at another academic institution and based on the same conditions on which the University would provide a transcript to any other student.
- 6.11. Upon arrival in US the University will provide to Students who progress to the University Summer Bridge Program (if any) and/or a University Program a full range of academic and non-academic student services on a basis equivalent to all other international students matriculated at the University (the cost of which will covered through the University Fees paid by the Student) (including, but not limited to, airport pick up and assistance from student helpers, health services, on-Campus dining, library and internet access, careers and academic counselling, on-Campus housing for Summer Bridge Residential Day Students only and off-Campus housing assistance for all students).
- 6.12. In particular, the University will provide assistance to Students seeking off-Campus housing options in the same manner and to the same degree that it provides such assistance to the University's other undergraduate and graduate students. For the avoidance of doubt, the University will not have any obligation to provide University housing to any Students (other than Summer Bridge Residential Day students). However, should the University offer housing to some or all Students, it will do so at the same rates it charges and on the same terms that it applies to other University students.

- 6.13. Students who progress to study on the University Summer Bridge Program (if any) and/or a University Program must carry health insurance in accordance with US federal law, the laws of the state in which the University Program is located, and as required by the University itself. If either the University or applicable law stipulates that such students must carry insurance issued by the University, then the University will offer insurance to such students at the same rates and on the same terms as those offered to other University students. Alternatively, if the University or the law requires insurance but not necessarily insurance provided by the University, then students may be offered a variety of options including insurance from the University, Kaplan or a third party, on the condition that those options meet University and applicable standards. In this case, if the student elects for University insurance, the University will receive 100 per cent of the insurance fee paid by the student. If, however, Kaplan offers insurance and the student elects for Kaplan's insurance, then Kaplan will receive 100 per cent of the insurance fee paid by the student.
- 6.14. The University will procure and maintain at its own cost with a reputable insurer all such insurance cover as would be usual or prudent for a comparable institution to maintain in respect of the activities carried out by the University as contemplated hereby, but not less than \$1,000,000 per occurrence. Such insurance will include, without limitation, commercial general liability insurance and professional insurance.

## **7. KAPLAN OBLIGATIONS**

- 7.1. Kaplan and the Consortium Chair, in collaboration with the Consortium Universities, will design an Application Form for the Program. Applicants will be expected to provide standard information such as secondary school transcripts, essay and a letter of recommendation.
- 7.2. Kaplan will market and promote the Consortium Universities equitably and consistently and provide joint opportunities for Consortium Universities directly to promote their institutions in the PRC. No Consortium University will be unfairly represented in admissions or marketing materials presented by Kaplan to applicants and/or Students.
- 7.3. Kaplan will consult with the University regarding which marks, symbols or other Intellectual Property Rights of the University may be used by Kaplan for the purposes of recruitment. Kaplan will create and submit to the University for approval all promotional and recruitment materials for the Program that use the University's pre-approved Intellectual Property Rights.



- 7.4. Kaplan will make good faith efforts to seek to meet minimum enrolment goals established for each Summer Bridge Program (subject as provided in Clause 5.9). Additionally, Kaplan agrees to observe any general maximum capacity limits or program specific capacity limits from time to time notified by the University.
- 7.5. The Consortium Chair will provide a master syllabus for each credit-bearing course to Kaplan. The requirements and methods of assessment for each credit-bearing course will be the same as those normally offered by the Consortium Chair to its on-campus students.
- 7.6. In each case the Consortium Chair's Academic Regulations and Procedures will apply to enrolment, delivery, participation and completion of a credit-bearing course. Nothing in this Agreement will operate to vary the Consortium Chair's Academic Regulations and Procedures.
- 7.7. PRC-based faculty and tutors will be employees of Kaplan. Under no circumstances will any faculty or tutor be considered an agent or employee of the University or Northeastern. PRC-based faculty and tutors will be subject to the following standards and conditions.
- 7.8. The professional credentials and level of experience required for Academic Program faculty hiring will be approved by Northeastern. Northeastern will review the credentials of all persons recommended by Kaplan representatives for faculty appointments. Following their review, Northeastern representatives will determine whether to approve or reject proposed appointments.
- 7.9. Kaplan faculty will provide instruction and/or advice for approved academic courses. Kaplan faculty will hold honorary Northeastern appointments for a specified duration. Kaplan faculty appointments will be terminated if the faculty member leaves the Program. Kaplan faculty will be evaluated according to Northeastern policies and procedures.
- 7.10. In the event of a disagreement between Kaplan and/or any Consortium University with regard to the application or enforcement of the Academic Guidelines, Complaints Procedures or Student Guidelines, the decision of the Consortium Chair, following input from Kaplan and any other applicable Consortium University whose input it deems appropriate and reasonable consideration thereof by the University, will be conclusive.

- 7.11. Kaplan will be responsible for securing all necessary licences or permits required in connection with the matters contemplated by this Agreement and also for ensuring compliance with any legal requirements involved in establishing the Program in accordance with PRC laws and regulations. Any expenses required to be expended in connection with the obtaining of the necessary licences or permits will be borne by Kaplan and Kaplan agrees to indemnify the University in connection therewith and/or regarding any circumstance in which the arrangements contemplated by this Agreement operate in circumstances where the applicable licences or permits have not been so obtained.
- 7.12. Kaplan is not an affiliate or division of the University and the University is not responsible for nor does it have control over the actions of Kaplan. The relationship of the Parties is strictly contractual and no Party is legally responsible for the other Parties. The University has no responsibility for the day-to-day operations or management of the Program. This Agreement shall not create any rights in or inure to the benefit of any third party.
- 7.13. It is not the intent of any Party to incur by contract any liability for the negligent operations, acts, or omissions of the other Party or any third party and nothing in the Agreement shall be so interpreted or construed.
- 7.14. Kaplan will maintain or cause to be maintained and at its own cost with a reputable insurer adequate public liability insurance in connection with its activities under this Agreement, insuring in particular against claims for loss or injury by Students or members of the public using the premises, equipment or other facilities which are provided by Kaplan, as well as the negligence or intentional misconduct of Kaplan faculty, its employees and agents.

Kaplan will also procure and maintain at its own cost with a reputable insurer all such other insurance cover as would be usual or prudent for a comparable institution to maintain in respect of the activities carried on by Kaplan as contemplated hereby. Such insurance will include, without limitation, professional indemnity insurance in such amounts as are agreed from time to time between Kaplan and the Consortium Chair. Kaplan agrees to provide a copy of the applicable policies promptly to a Consortium University upon request.

- 7.15. Each Party agrees to indemnify each other Party from and against any liability (including costs, claims, demands, liabilities, expenses, damages or losses (including reasonable legal costs and expenses, but expressly excluding any indirect, special or consequential loss or damage, including loss of profit, loss of future contracts, loss of

reputation or loss of opportunity)) that the claiming Party may have to any Students if and to the extent that such liability arises out of or in connection with the indemnifying Party's negligence or breach of this Agreement or contracts with the applicable Students or of applicable law.

If any such Student makes a claim against, or notifies of an intention to make a claim against, a claiming Party which may reasonably be considered as likely to give rise to a liability under this indemnity (a "**Relevant Claim**"), the claiming Party will:

- (a) as soon as reasonably practicable give written notice of that matter to the indemnifying Party, specifying in reasonable detail the nature of the relevant claim;
- (b) not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the indemnifying Party (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) give the indemnifying Party and its professional advisors reasonable access to any relevant documents and records within the power or control of the claiming Party so as to enable the indemnifying Party and its professional advisers to examine such documents and records and to take copies at their own expense for the purposes of assessing the merits of the relevant claim;
- (d) subject to the indemnifying Party indemnifying the claiming Party to the claiming Party's reasonable satisfaction against any liabilities, costs, damages or expenses which may be incurred, take such action as the indemnifying Party may reasonably request to avoid, dispute, resist, compromise or defend the relevant claim.

The aggregate liability of each Party in connection with all claims brought against any other Party in connection with any indemnity granted pursuant to this Clause 7.13 will not exceed US\$[            ].

Notwithstanding the foregoing, in the event that any Party is entitled to claim under any policy of insurance in respect of the circumstances giving rise to any claim pursuant to this Clause 7.13, such Party will be required to bring such a claim and pursue such claim with reasonable diligence. Where the proceeds received by the relevant Party in respect of such insurance claim exceed the amount which a claiming Party would otherwise be entitled to recover in respect of a claim pursuant to this

Clause 7.13, the indemnifying Party's total liability in respect of such claim will remain limited in accordance with the preceding paragraph.

**8. FINANCIAL PROVISIONS**

- 8.1. Kaplan will be solely responsible for setting and collecting the IFY and Academic Program Fees, excluding the Summer Bridge Program Fees.
- 8.2. The University will be solely responsible for settling and collecting the University Tuition and Fees and notifying Kaplan of the University Tuition and Fees that will apply with respect to a particular Academic Year no later than six months before commencement of such Academic Year.
- 8.3. If the University from time to time operates a University Summer Bridge Program, then the University agrees to pay to Kaplan a fee for each Student progressing from Kaplan thereto and registering thereon equal to 10 per cent of the first year's tuition fees paid to the University with respect thereto by such Student.

If, however, the University does not from time to time operate a University Summer Bridge Program and a Student progresses from Kaplan to the University and registers on a University Program, then the University agrees to pay to Kaplan a fee for each such student so progressing equal to 5 percent of the tuition fees paid to and actually collected by the University for the first year of such Student's study in the United States on the relevant University Program.

Such fees will be paid to Kaplan by the University within 30 days of commencement of the relevant Academic Year in respect of which the applicable Students have commenced the applicable study. Such fees will be paid in US dollars without set off or deduction to such account as Kaplan notifies the University from time to time.

- 8.4. Save as expressly provided in this Agreement, each Party will bear its own costs incurred in the performance of this Agreement (and in particular, Kaplan will bear all agency costs of Student recruitment in the PRC).
- 8.5. If a Party is late in paying the whole or any part of any sum due under this Agreement which is not subject to a genuine dispute the other Party will be entitled to charge interest on overdue sums from the due date to the date of payment at the rate of two per cent. above the base lending rate from time to time of HSBC Bank. Such interest will be charged daily and compounded monthly.

**9. INTELLECTUAL PROPERTY**

- 9.1. The Program Materials relating to the Academic Programs and any and all Intellectual Property Rights therein will be the exclusive property of Northeastern or, as applicable, such other Consortium University as provided the same for use by Kaplan. Kaplan may use (and is hereby so licensed on a royalty free basis so to use) such items for the purpose only of recruiting to, teaching and otherwise providing the Academic Programs and evaluating Students studying thereon and otherwise exercising its related rights and performing its related obligations. This licence will (to the extent comprising the University's Intellectual Property Rights) continue for so long as this Agreement remains in place.
- 9.2. At the request and cost of the University, Kaplan will sign and execute all documents, and will (at the University's cost) do and will procure the doing of all acts, as may be necessary or desirable to give effect to Clause 9.1 and/or to assist the University to protect, maintain and enforce the rights so vested in the University.
- 9.3. The Program Materials relating to the IFY Program and the non-credit Academic Materials relating to the IFY Program and any and or Intellectual Property Rights therein will be the exclusive property of Kaplan. Additionally, it is hereby agreed and confirmed that all Intellectual Property Rights in Kaplan or any Kaplan affiliate's Australian IFY and UK IFY programs belong to Kaplan or the applicable Kaplan Affiliate.
- 9.4. At the request and cost of Kaplan, the University will sign and execute all documents, and will (at Kaplan's cost) do and will procure the doing of all acts, as may be necessary or desirable to give effect to Clause 9.3 and/or to assist Kaplan to protect, maintain and enforce the rights so vested in Kaplan and/or the applicable Kaplan Affiliate.
- 9.5. The University Trade Marks and all goodwill in the same are and will at all times remain the property of the University. The University hereby authorises Kaplan (by way of limited, non-transferable royalty free licence) to use the University Trade Marks for the purposes only of providing the Programs and otherwise performing its obligations under this Agreement.
- 9.6. The Kaplan Trade Marks and all goodwill in the same will at all times remain the property of Kaplan or the applicable Kaplan Affiliate. Kaplan hereby authorises the University (by way of limited, non-transferable royalty free licence) to use the Kaplan Trade Marks for the purpose only performing its obligations under this Agreement.

9.7. Each of the University and Kaplan will ensure that each of its references to and use of the other's Trademarks is in a manner from time to time approved by the other such Party in advance. Each such Party will submit any and all materials bearing the other's Trademarks to the other such Party for prior approval (such approval not to be unreasonably withheld or delayed).

**10. WARRANTIES**

- 10.1. Each Party represents and warrants that it has full capacity and authority to enter into and perform its obligations under this Agreement, which is legal, valid, binding and enforceable.

**11. CONFIDENTIALITY**

- 11.1. Each Party will keep the other's Confidential Information confidential and will not divulge the same to any third party (except to the other Consortium Universities and such of its and their respective employees, advisors or agents who are appropriate to be made aware of the same in connection with the provisions of the applicable functions in connection with the arrangements contemplated hereby and who are aware of the obligations of confidentiality contained herein and in respect of whose compliance therewith the applicable Party will remain responsible).
- 11.2. The provisions comprising Clauses 11.1 to 12.3 will not apply to any Confidential Information that the receiving Party can show:
- (a) is in the public domain other than as a result of a breach of this Agreement by the relevant Party;
  - (b) is or was lawfully received from a third party not under an obligation of confidentiality with respect thereto;
  - (c) is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required); or
  - (d) was developed independently of and without reference to Confidential Information disclosed by the other Party.
- 11.3. At the end of the term of this Agreement, each Party will, at the option of the other applicable Party, either:
- (a) return such other Party's Confidential Information and any copies or extracts relevant to it to the other Party; or
  - (b) destroy or delete that Confidential Information and any copies and extracts and certify to the other Party in writing that it has done the same.

## **12. RECORD KEEPING**

- 12.1. Each Party will keep true and accurate records and books of account containing all the data necessary for the calculation of any payments due pursuant to this Agreement.
- 12.2. Each Party will ensure the confidentiality of all Student records and will comply with all applicable provisions of the Family Education Rights and Privacy Act ("FERPA") or other local equivalent. The Parties will provide each other with any requested data relating to the Programs, subject to the restrictions of FERPA and other applicable laws.
- 12.3. Each Party must maintain for the minimum period prescribed by applicable laws (as may be amended from time to time) all information and records relating to any of the Students.

## **13. COVENANTS**

- 13.1. The University covenants with Kaplan that it will not during the term of this Agreement either independently or in conjunction with any person, persons or entity, whether directly or indirectly, establish any program provided in the PRC or join any consortium relating to or providing a foundation year in the PRC with objectives similar to the Programs, namely to assist students from the PRC to obtain a standard required to secure admission to the University for undergraduate studies or otherwise provide study programs to be undertaken prior to their gaining direct access to study at the University.
- 13.2. The foregoing will not operate to restrict the University from establishing or continuing programs of any kind with foreign or US entities that do not result in the creation of such an alternative as specified previously for recruiting students in the PRC and which do not use Intellectual Property Rights of the type developed for use in connection with the programs contemplated hereby.

## **14. GENERAL**

- 14.1. No Party may assign, sub-contract or transfer the whole or any part of this Agreement without the prior written consent of the others. This Agreement will bind and inure for the benefit of all permitted successors and assigns of the Parties.



14.2. Any notice or communication given under or in relation to the this Agreement will be writing and will be sent by special delivery post or international courier to the Party at its address set out below or to such other address as it has subsequently notified the sending Party in writing. Any such notice will be deemed served once received.

The addresses for service of notice are:

If to the University: [                    ]  
Attention: [                    ]

With a copy sent to: [                    ]

If to Northeastern  
Attention: Patrick Plunkett  
Senior Associate Dean  
College of Professional Studies  
10 BV  
Northeastern University  
Boston, MA 02115

With a copy sent to: Office of the University Counsel  
115 Churchill Hall  
Northeastern University  
Boston, MA 02115-5000

If to Kaplan:  
Attention: Basil Cleveland  
Kaplan Asia Pacific  
Unit 1103, 11/F, Far East Finance Centre  
16 Harcourt road, Admiralty  
Hong Kong

With a copy sent to: Johan De Muinck Keizer  
Kaplan, Inc.  
888 Seventh Avenue  
23rd Floor  
New York, NY 10106

And a further copy sent to: Susan Paton  
Kaplan Europe  
7<sup>th</sup> Floor  
100 Cannon Street  
London EC4N 6EU

14.3. The Parties will perform their obligations under this Agreement as independent contractors and nothing in this Agreement will create a relationship of employer, employee, principal and agent or partnership amongst the Parties.


14.4. Kaplan, its employees, agents, invitees, participants, sub-contractors and affiliates or anyone under the direction of Kaplan will not be considered employees of the University. Kaplan will be responsible for all payroll, taxes, benefits, workers


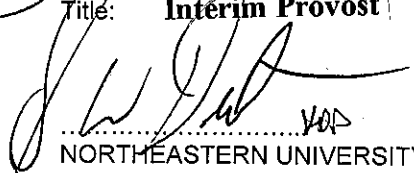
compensation insurance and any other obligations that it may legally be responsible for in relation to all such other individuals.

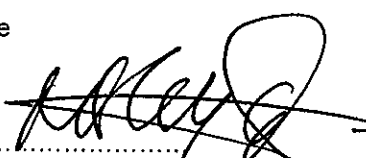
- 14.5. No variation of or amendment to this Agreement will be effective unless made in writing and signed by authorised representatives of the Parties.
- 14.6. In no circumstances will any Party be entitled to enter into any contracts, or to assume or create any obligations or liability of any kind, express or implied, in the name or on behalf of any other Party and will not take any action which would create appearance of its having such authority.
- 14.7. The failure or delay of either Party to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to this Agreement does not constitute and will not be construed as a waiver of such term or right and will in no way affect any Party's right later to enforce or exercise it, nor will any single or partial exercise of any right, remedy, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
- 14.8. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective only to the extent of such invalidity or unenforceability and will not render invalid or unenforceable the remaining terms and provisions of this Agreement or affect the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.
- 14.9. This Agreement contains the entire agreement of the Parties hereto with respect to the matters detailed herein and supersedes any previous agreement or agreements between the Parties with respect to the subject matter hereof, either express or implied and whether written or oral. Other than as may otherwise be specified herein, this Agreement cannot be supplemented, varied, amended, changed, waived, or discharged except in writing signed by an authorised representative of each Party.
- 14.10. This Agreement may be executed in counterparts, each of which will be deemed an original and which together will constitute one and the same agreement.

**THIS AGREEMENT** is executed and delivered by the duly authorised representatives of the Parties on the day and year first above written.

  
.....  
BAYLOR UNIVERSITY

**ATTEST:**   
.....  
Marsha J. Duckworth,  
Assistant Secretary

 By: **Elizabeth Davis**  
Title: **Interim Provost**  
  
.....  
NORTHEASTERN UNIVERSITY

By:  
Title  
  
.....  
SHANGHAI KAI BO EDUCATION  
INVESTMENT MANAGEMENT CO., LTD

By:  
Title