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Santa Ana College • Santiago Canyon College

IV -1

DRAFT

BOARD OF DIRECTORS REGULAR MEETING

Tuesday, May 12, 2015 - 12:00 p.m.
Executive Conference Room #114, District Office

MINUTES

I. CALL TO ORDER

Kristin Crellin called the meeting to order at 12:08 p.m. Due to Kristin's health and weak voice, the meeting was turned over to Enrique Perez.

II. ROLL CALL

Members in attendance: Kristin Crellin, Todd O. Litfin, Eddie Marquez, Richard Porras & Nelida Mendoza Yáñez

Ex-Officio Voting Members in attendance: Enrique Perez & Dr. Raúl Rodríguez

Ex-Officio Non-Voting Members in attendance: John Didion, Dr. Erlinda Martinez & Dr. John Weispfenning

Guests: Robert Feldhake

Not Present: Claudia C. Alvarez, David G. Coffaro, Peter Hardash & Hector J. Infante

III. APPROVAL OF THE AGENDA

Action may be taken by the Board of Directors on any item listed on this Agenda.

A. Amendments and Corrections (if any)

Enrique amended item XII C of the Agenda for approval of Foundation Board Members; Hector J. Infante, Eddie Marquez, Richard Porras, Todd O. Litfin, David Coffaro as well as Kristin Crellin as post Agenda items.

B. Approval of Agenda

It was moved by Todd O. Litfin, seconded by Nelida Mendoza Yáñez and carried unanimously to approve the May 12th 2015 Foundation Agenda.

IV. APPROVAL OF MINUTES – March 24, 2015 Board Meeting

A. Corrections (if any)

None provided.

B. Approval of the Minutes

It was moved by Todd O. Litfin, seconded by Dr. Raúl Rodríguez and carried unanimously to approve the March 24, 2015 Minutes.

FOUNDATION BOARD MEMBERS:

Claudia C. Alvarez • Arianna Barrios • Kristin Crellin • Hector J. Infante • Todd O. Litfin • Eddie Marquez • Nelida Mendoza Yáñez • Richard Porras • David G. Coffaro

Ex-Officio Members-Voting: Dr. Raúl Rodríguez • Peter Hardash • Enrique Perez

Ex-Officio Members-Non Voting: John Didion • Dr. Erlinda Martinez • Dr. John Weispfenning

V. PUBLIC COMMENTS

At this time, members of the public may address the Board of Directors regarding any item within the subject matter jurisdiction of the Board, provided that no action may be taken on off-Agenda items unless authorized by law. Comments shall be limited to five minutes per person and twenty minutes for all comments, unless different time limits are set the President and approved by the Board.

(Richard Porras had to leave the meeting due to a prior commitment. Arianna Barrios arrived to the meeting at this time)

Dr. Barry Resnick spoke regarding the potential agreement between the Colleges of Excellence in Saudi Arabia and the Rancho Santiago Community College District Foundation.

VI. PRESIDENT'S REPORT

No report was given by the President

VII. CEO'S REPORT

Enrique commented on the RSCCD Faculty Association letter that was received by the Foundation and expressed his gratitude and appreciation as it has moved the Foundation to look into its processes and structure. The Foundation has hired legal counsel to assist in these matters. Enrique reported on the formation of International Student Recruitment Committee which includes Syed Rizvi from Santiago Canyon College and Mark Liang from Santa Ana College. They are currently planning the 2015-2016 budget and future activities.

VIII. COMMITTEE REPORTS

No reports given

IX. TREASURER'S REPORT

Enrique reported that there are no Treasurer's Reports to present as Peter Hardash was unable to attend this meeting.

X. STAFF REPORTS

No reports given by staff.

XI. BOARD MEMBER COMMENTS

Dr. Rodríguez commented on the public comment that was made in relation to the Foundation's Audits. All audits have been clean with the highest level of scrutiny. Other years there may have been minor issues but the Foundation has always received clean audits. Todd commented about the Faculty Association letter received in regards to the Brown Act, that ratification items on Agenda are an effort to cure any alleged violations to the Brown Act and were are doing this because this is the correct procedure to be taken to do so. Legal counsel to the Foundation, Robert Feldhake, commented that Todd's comments are correct. The actions the Foundation has taken in response to the Faculty Association letter have been in accordance to the Brown Act; the Agenda has been posted within the 72 hour notice and there is a 30 day window that allows any corrections to any alleged violations.

Arianna asked if each of the colleges Foundation's follow the same procedure as the Brown Act. Dr. Rodríguez stated that the colleges Foundation's must also follow the Brown Act.

FOUNDATION BOARD MEMBERS:

Claudia C. Alvarez • Arianna Barrios • Kristin Crellin • Hector J. Infante • Todd O. Litfin • Eddie Marquez • Nelida Mendoza Yañez • Richard Porras • David G. Coffaro

Ex-Officio Members-Voting: Dr. Raúl Rodríguez • Peter Hardash • Enrique Perez

Ex-Officio Members-Non Voting: John Didion • Dr. Erlinda Martinez • Dr. John Weispfenning

Arianna commented that she'd like to serve on the International Student Recruitment Committee.

XII. ITEMS FOR DISCUSSIONS AND/OR ACTION

- A. Approval of Retention Agreement with The Feldhake Law Firm, APC (for discussion and/or action).

A motion to amend the Retention Agreement was made for the hourly rate to not exceed \$265 an hour, page 2 of the Agreement.

It was moved by Eddie Marquez, seconded by Kristin Crellin and carried unanimously to approve the Retention Agreement with The Feldhake Law Firm, APC with an amended motion to revise page 2 of the agreement to not exceed the hourly rate of \$265.

- B. Approval of the Conflict Waiver Agreement with the Feldhake Law Firm, APC (for discussion and/or action).

It was moved by Todd O. Litfin, seconded by Arianna Barrios and carried unanimously to approve the Conflict Waiver Agreement with the Feldhake Law Firm as presented.

- C. Approval and ratification of Kristin Crellin as an elected member of the Rancho Santiago Community College District Foundation and as a representative of the Santa Ana College ("SAC") Foundation (for discussion and/or action).

A motion was made to include Board Members Hector J. Infante, Eddie Marquez, Richard Porras, Todd O. Litfin, David Coffaro as well as Kristin Crellin for Board approval.

It was moved by Eddie Marquez, seconded by Dr. Raúl Rodríguez and carried unanimously to approve the elected members as presented.

- D. Approval and ratification of the Rancho Santiago Community College District Foundation's revised business plan effective September 28, 2011 (for discussion and/or action).

Enrique commented on the Foundation's mission change from one focused on fundraising to one of economic development.

It was moved by Kristin Crellin, seconded by Dr. Raúl Rodríguez and carried unanimously to approve the Foundation's revised business plan.

- E. Approval and ratification Rancho Santiago Community College District Foundation's revised Bylaws effective October 31, 2013 (for discussion and/or action).

It was moved by Eddie Marquez, seconded by Kristin Crellin and carried unanimously to approve the Foundation's Bylaws as presented.

FOUNDATION BOARD MEMBERS:

Claudia C. Alvarez • Arianna Barrios • Kristin Crellin • Hector J. Infante • Todd O. Litfin • Eddie Marquez • Nelida Mendoza Yañez • Richard Porras • David G. Coffaro

Ex-Officio Members-Voting: Dr. Raúl Rodríguez • Peter Hardash • Enrique Perez

Ex-Officio Members-Non Voting: John Didion • Dr. Erlinda Martinez • Dr. John Weispfenning

- F. Approval and ratification of March 2014 expenditures of Dr. Raúl Rodríguez and Enrique Perez for travel to San Francisco on April 2, 2014 to meet with Colleges of Excellence representative(s) (for discussion and/or action).

Enrique commented that the combined total cost for this trip's expenses were approximately \$880.

It was moved by Eddie Marquez, seconded by Kristin Crellin and carried unanimously to approve the March 2014 expenses as presented for Dr. Raúl Rodríguez and Enrique Perez for travel to San Francisco on April 2, 2014.

- G. Approval and ratification of acceptance of \$15,000 from SchoolsFirst Credit Union Bank to be used in connection with international activities. (for discussion and/or action)
Enrique clarified that when the Foundation sought the donation from SchoolsFirst, the donation would be used for International Student Recruitment and related activities.

It was moved by Todd O. Litfin, seconded by Arianna Barrios, with an abstention from Kristin Crellin, to approve the acceptance of the \$15,000 SchoolsFirst Credit Union Bank check.

- H. Approval and ratification of Rancho Santiago Community College District Foundation's Mission Statement effective September 25, 2014 (for discussion and/or action).

It was moved by Kristin Crellin, seconded by Dr. Raúl Rodríguez and carried unanimously to approve the Foundation's Mission Statement.

- I. Approval and ratification of January 28, 2015 Binding Letter of Execution with the Colleges of Excellence Company (for discussion and/or action).
Enrique commented on how this letter started the process after the Foundation received notice that it had been selected to potentially enter a contract in Saudi Arabia for two colleges and this Binding Letter of Execution is required.

It was moved by Arianna Barrios, seconded by Todd O. Litfin and carried unanimously to approve the Binding Letter of Execution with the Colleges of Excellence Company.

- J. Approval and ratification of payment to Gus Chamorro pursuant to the January 28, 2015 Binding Letter of Execution with the Colleges of Excellence Company (for discussion and/or action).

It was moved by Nelida Mendoza Yáñez, seconded by Kristin Crellin and carried unanimously to approve payment to Gus Chamorro for his trip to Saudi Arabia in February 2015.

FOUNDATION BOARD MEMBERS:

Claudia C. Alvarez • Arianna Barrios • Kristin Crellin • Hector J. Infante • Todd O. Litfin • Eddie Marquez • Nelida Mendoza Yáñez • Richard Porras • David G. Coffaro

Ex-Officio Members-Voting: Dr. Raúl Rodríguez • Peter Hardash • Enrique Perez

Ex-Officio Members-Non Voting: John Didion • Dr. Erlinda Martinez • Dr. John Weispfenning

- K. Approval and ratification of payment to Christopher Mackie pursuant to the January 28, 2015 Binding Letter of Execution with the Colleges of Excellence Company (for discussion and/or action).

Enrique commented that no documents are being presented as there has been no payment from the Foundation to Chris Mackie in relation to the current Saudi Arabia Project. This is subject to coming back at the next meeting and clarifying any payment made as advised by Robert Feldhake, Legal Counsel.

It was moved by Todd O. Litfin, seconded by Kristin Crellin to approve clarification of a possible payment to Chris Mackie.

- L. Approval and ratification of interim payment instruction agreement with Al Khaleej Training and Education (for discussion and/or action).

It was moved by Kristin Crellin, seconded by Dr. Raúl Rodríguez and carried unanimously to approve the interim payment instruction agreement.

- M. Approval and ratification of Preliminary Agreement fiveDLearning, Inc., a Delaware corporation, dated February 19, 2015 (for discussion and/or action).

Robert Feldhake commented that fiveDLearning was an interim agreement not to exceed \$250,000 as an assurance that its Saudi Arabia expenses to be reimbursed by the Joint Venture.

Arianna asked what Chris Mackie's role is in the Saudi Arabia Joint Venture. Dr. Rodríguez commented that Chris is a consultant for the Saudi Arabia Project, making trips to Saudi Arabia on our behalf, grants writer and worked with Alkaleej on the pricing. Arianna asked to be forwarded a Bio for Chris Mackie.

It was moved by Kristin Crellin, seconded by Nelida Mendoza Yáñez and carried unanimously to approve the Preliminary Agreement for fiveDLearning, Inc.

- N. Approval and ratification of Memorandum of Understanding Regarding Joint Venture to Develop Community Colleges in the Kingdom of Saudi Arabia with Al Khaleej Training and Education (for discussion and/or action).

Todd O. Litfin asked if the Memorandum of Understanding outlines the future Saudi Arabia agreement. Robert Feldhake commented that the Memorandum of Understanding can be likened to the prelude of being serious to moving forward with the Joint Venture, like an assurance letter and also pointed out that the agreement has been signed by Al Khaleej.

It was moved by Arianna Barrios, seconded by Dr. Raúl Rodríguez and carried unanimously to approve the Memorandum of Understanding.

(Dr. Erlinda Martinez left the meeting at this time.)

- O. Discussion of current Board of Directors/Staff procedures—addressing recent communications and discussion of enhanced Board and staff procedures for best practices, transparency and full compliance with all legal requirements (for discussion only).

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Enrique asked for volunteers from the Board for this committee that covers Items VII O and P. Kristin Crellin and Dr. Raúl Rodríguez both volunteered to serve.

- P. Discussion of current governance structure of Board of Directors of the Foundation, relevant Bylaw provisions (for discussion only).

Kristin Crellin and Dr. Raúl Rodríguez both volunteered to serve on the committee to review current governance structure.

- Q. Approval and ratification of unconditional commitment as to compliance with the Ralph M. Brown Act (for discussion and/or action).

Robert Feldhake commented that this fulfills a 2nd part to follow the Brown Act, this being part of the Brown Act compliance.

It was moved by Todd O. Litfin, seconded by Arianna Barrios and carried unanimously to approve the commitment to comply with the Ralph M. Brown Act.

XIII. CLOSED SESSION

THE BOARD OF DIRECTORS WILL NOW BE MOVING INTO CLOSED SESSION. MATTERS TO BE DISCUSSED ARE THOSE PERMITTED BY GOVERNMENT CODE SECTIONS 54956.8, 54956.9, 54956.95, 54957, AND 54957.6 – PERSONNEL, LITIGATION, AND/OR REAL PROPERTY.

Pending Litigation – Faculty Association of the Rancho Santiago Community College District re alleged Brown Act violations by the Foundation Board. Govt. Code §54956.9(a), (b), (c) (for discussion and/or action)

XIV. RETURN TO OPEN SESSION

(Announcement of Action Taken in Closed Session As Required Under Brown Act and California Law)

Issues discussed in CLOSED SESSION

Pending Litigation – Faculty Association of the Rancho Santiago Community College District re alleged Brown Act violations by the Foundation Board. Govt. Code §54956.9(a), (b), (c) (for discussion and/or action)

FOUNDATION BOARD MEMBERS:

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XV. FUTURE MEETINGS

June 23, 2015 – Board of Directors Regular & Annual Meeting

XVI. ADJOURNMENT

The next regular and annual meeting of the Board of Directors will be held on June 23, 2015 at 2323 N. Broadway, Santa Ana, California 92706 at 12 p.m.

Enrique informed the Board that the Foundation Budget for 2015/2016 will be presented at the next meeting.

Enrique adjourned the meeting at 1:06pm.

Americans with Disabilities Act

The Rancho Santiago Community College District Foundation (the “Foundation”) conforms to the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 and the Federal Rules and Regulations adopted in implementation thereof. A request for disability related modification or accommodation, in order to participate in a public meeting of the Foundation, shall be made to: Enrique Perez, J.D., Executive Director, Rancho Santiago Community College

FOUNDATION BOARD MEMBERS:

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IX

Rancho Santiago Community College District Foundation
Statement of Activities
Year to date ending 03/31/15

	Unrestricted Fund (91)	Investment/Unrestricted Fund (92)	Scholarship Fund	Restricted Fund (97)	Total All Funds
Revenue					
Contributions, gifts, donations	\$7,500.00	\$0.00	\$0.00	\$67,500.00	\$75,000.00
Fundraising	0.00	0.00	0.00	0.00	0.00
Interest and dividends	58.89	0.00	0.00	0.00	58.89
Realized/unrealized gains (losses)	3,904.40	0.00	0.00	0.00	3,904.40
ATM surcharge revenue	0.00	0.00	0.00	0.00	0.00
Other federal revenues	0.00	0.00	0.00	0.00	0.00
In kind assets, services, facilities	0.00	0.00	0.00	0.00	0.00
Total revenue	\$11,463.29	0.00	\$0.00	67,500.00	78,963.29
Expenditures					
Salaries, wages, benefits	0.00	0.00	0.00	0.00	0.00
Supplies, board expense.	257.56	0.00	0.00	0.00	257.56
Contract and outside services - SBDC pass thru	0.00	0.00	0.00	0.00	0.00
Distribution of Investment to College Foundations	0.00	0.00	0.00	0.00	0.00
Travel and Conference Expense	41.83	0.00	0.00	0.00	41.83
Licenses, dues, memberships	962.00	0.00	0.00	0.00	962.00
Facility and equipment rentals	0.00	0.00	0.00	0.00	0.00
Legal, audit, professional fees	9,390.00	0.00	0.00	0.00	9,390.00
Bank Charges & Investment Fees	2,175.13	0.00	0.00	0.00	2,175.13
Other operating expenses/services, bank fees	3,435.00	0.00	0.00	0.00	3,435.00
Community/Public Relations - International	73,687.67	0.00	0.00	0.00	73,687.67
Capital outlay	0.00	0.00	0.00	0.00	0.00
Scholarships/program grants - Coleman	0.00	0.00	0.00	100.00	100.00
Total expenditures	89,949.19	0.00	0.00	100.00	90,049.19
Revenue over (under) expenditures	(78,485.90)	0.00	0.00	67,400.00	(11,085.90)
Beginning net asset balance	33,827.46	310,293.17	0.00	38,941.94	383,062.57
Ending net asset balance	(\$44,658.44)	\$310,293.17	\$0.00	\$106,341.94	\$371,976.67

265,634.73

Rancho Santiago Community College District Foundation
 Statement of Financial Position
 At 03/31/15

	Unrestricted Fund (91)	Investment/Unrestricted Fund (92)	Scholarship Fund	Restricted Fund (97)	Total All Funds
Cash and equivalents	\$10,163.42	\$9,246.06	\$0.00	75,514.75	\$94,924.23
Accounts receivable	0.00	0.00	0.00	30,827.19	30,827.19
Due to (from) other funds	0.00	0.00	0.00	0.00	0.00
Investments, at fair value	0.00	252,791.38	0.00	0.00	252,791.38
Office Equipment	522.87	0.00	0.00	0.00	522.87
Total assets	\$10,686.29	\$262,037.44	\$0.00	\$106,341.94	\$379,065.67

LIABILITIES AND NET ASSETS

Liabilities				
Accounts payable/ deferred revenues	\$7,089.00	\$0.00	\$0.00	\$0.00
Due to affiliated foundations	0.00	0.00	0.00	0.00
Due to organizations	0.00	0.00	0.00	0.00
Total Liabilities	7,089.00	0.00	0.00	7,089.00

	Unrestricted	Investment/Unrestricted	Scholarship	Restricted	Total
Net Assets					
Unrestricted	3,597.29	9,246.06	0.00	0.00	12,843.35
SBDC Pass Thru Donations	0.00	0.00	0.00	67,500.00	67,500.00
Investment/Restricted Programs	0.00	252,791.38	0.00	38,841.94	291,633.32
Total net assets	3,597.29	262,037.44	0.00	106,341.94	371,976.67
Total liabilities and net assets	\$10,686.29	\$262,037.44	\$0.00	\$106,341.94	\$379,065.67

\$0.00 \$0.00 \$0.00 \$0.00 \$0.00

379,065.67

Rancho Santiago Community College District Foundation
 Statement of Activities
 Year to date ending 04/30/15

	Unrestricted Fund (91)	Investment/ unrestricted Fund (92)	Scholarship Fund	Restricted Fund (97)	Total All Funds
Revenue					
Contributions, gifts, donations	\$7,500.00	\$0.00	\$0.00	\$67,500.00	\$75,000.00
Fundraising	0.00	0.00	0.00	0.00	0.00
Interest and dividends	65.36	0.00	0.00	0.00	65.36
Realized/unrealized gains (losses)	4,156.36	0.00	0.00	0.00	4,156.36
ATM surcharge revenue	0.00	0.00	0.00	0.00	0.00
Other federal revenues	0.00	0.00	0.00	0.00	0.00
In kind assets, services, facilities	0.00	0.00	0.00	0.00	0.00
Total revenue	\$11,721.72	0.00	\$0.00	67,500.00	79,221.72
Expenditures					
Salaries, wages, benefits	0.00	0.00	0.00	0.00	0.00
Supplies, board expense.	257.56	0.00	0.00	0.00	257.56
Contract and outside services - SBDC pass thru	0.00	0.00	0.00	0.00	0.00
Distribution of Investment to College Foundations	0.00	0.00	0.00	0.00	0.00
Travel and Conference Expense	41.83	0.00	0.00	0.00	41.83
Licenses, dues, memberships	962.00	0.00	0.00	0.00	962.00
Facility and equipment rentals	0.00	0.00	0.00	0.00	0.00
Legal, audit, professional fees	9,390.00	0.00	0.00	0.00	9,390.00
Bank Charges & Investment Fees	2,803.59	0.00	0.00	0.00	2,803.59
Other operating expenses/services, bank fees	3,435.00	0.00	0.00	0.00	3,435.00
Community/Public Relations - International	79,000.00	0.00	0.00	0.00	79,000.00
Capital outlay	0.00	0.00	0.00	0.00	0.00
Scholarships/program grants - Coleman	0.00	0.00	0.00	100.00	100.00
Total expenditures	95,889.98	0.00	0.00	100.00	95,989.98
Revenue over (under) expenditures	(84,168.26)	0.00	0.00	67,400.00	(16,768.26)
Beginning net asset balance	33,827.46	310,293.17	0.00	38,941.94	383,062.57
Ending net asset balance	(\$50,340.80)	\$310,293.17	\$0.00	\$106,341.94	\$366,294.31

259,952.37

IX. B-1

Prepared for:

R.S.C.C.D. FOUNDATION

Portfolio Review

Information as of May 29, 2015
Prepared on June 16, 2015

Prepared by:

Frederick Fong

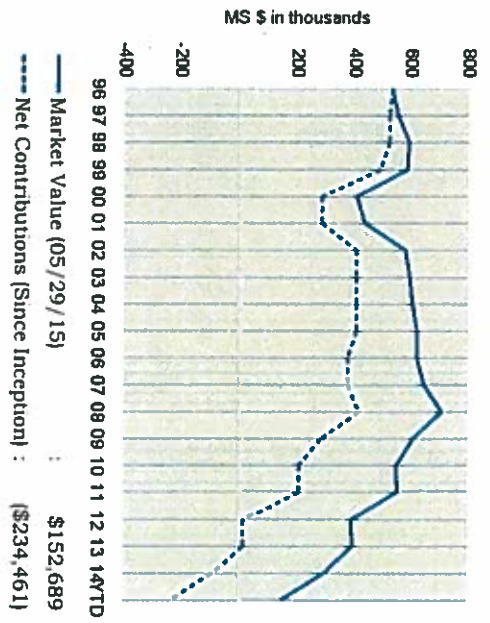
Investment Summary	2
Composite Allocation	3
Composite Analysis	4
Advisory Accounts Allocation	5
Advisory Accounts Analysis	
Composite Performance	7

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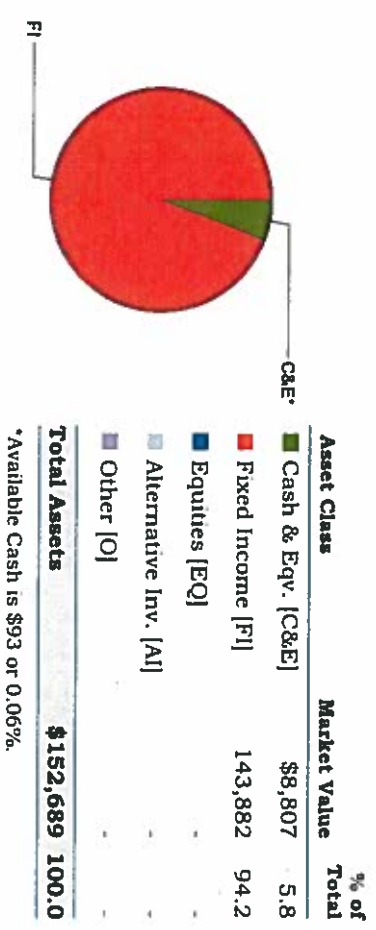
Investment Summary prepared for R.S.C.C.D. FOUNDATION as of 05/29/15

Asset Growth and Portfolio Returns¹

	Year 2012 12/31/11 to 12/31/12	Year 2013 12/31/12 to 12/31/13	Year 2014 12/31/13 to 12/31/14	For the Period 12/31/96 to 05/29/15
Beginning Value	\$555,484	\$396,444	\$397,365	\$538,086
Net Contributions	(189,131)	234	(105,025)	(772,547)
Ending Value	396,444	397,365	300,798	152,689
Total Returns	\$30,091	\$687	\$8,458	\$387,150
Time Weighted Rate of Return (TWR)	8.7	0.2	2.5	Annualized 4.0
Total Net Returns (%)	8.7	0.2	2.5	4.0
S&P 500 (%)	16.0	32.4	13.7	7.7
BC Govt Credit (%)	4.8	(2.4)	6.0	5.6
Citygroup 3 Month T-Bill (%)	0.1	0.0	0.0	2.4



Asset Allocation



¹ The investment results depicted here represent a net return after the deduction of advisory fees for Morgan Stanley accounts only.

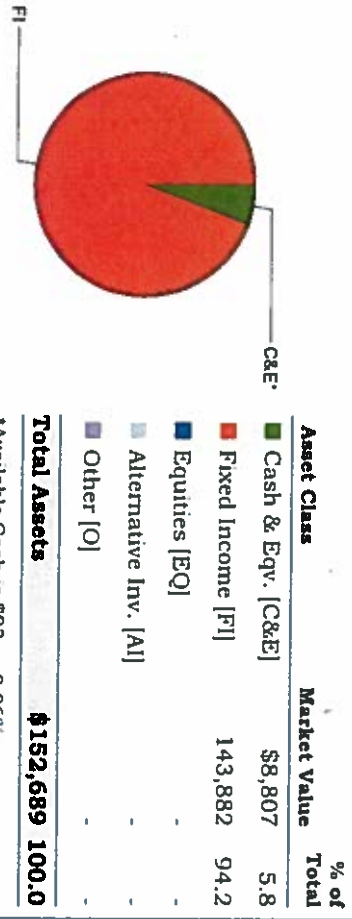
Income Summary

Year-to-Date	Estimated
01/01/15	Year 2015
05/29/15	Next 12 Months
2,836	3,514
2,836	3,641
Morgan Stanley Total Income	3,514
	3,641

If external holdings were provided, they have been included in this report in order to provide you with a more complete picture of your financial holdings. Please note: Morgan Stanley Smith Barney LLC is not responsible for information (including valuations) from external sources. Please contact your financial advisor to update your information.

Composite Allocation prepared for R.S.C.C.D. FOUNDATION as of 05/29/15

Asset Allocation



Style Analysis

Fixed Income (% of Household)				Equity (% of Household)			
Domestic				Domestic			
Short	Intern.	Long	Quality	Value	Core	Growth	Size
0.0	0.0	0.0	High Quality	0.0	0.0	0.0	Large Size
0.0	0.0	0.0	Medium Quality	0.0	0.0	0.0	Medium Size
0.0	0.0	0.0	Low Quality	0.0	0.0	0.0	Small Size
International				International			
N/A				Core Emerg. Other			
0.0	94.2	0.0	0.0	0.0	0.0	0.0	0.0

Asset Allocation Detail

Account No.	Account	Cash Equivalents	Fixed Income	Equities	Alternative Investments	Other	Total Account Value
R.S.C.C.D. FOUNDATION							
202-212548	R.S.C.C.D. FOUNDATION Consulting Group Advisor	8,807 5.8%	143,882 94.2%	-	-	-	152,689 100.0%
	Consulting Group Advisor						
	Portfolio Total	\$8,807 5.8%	\$143,882 94.2%	-	-	-	\$152,689 100.0%
	Household Total	\$8,807 5.8%	\$143,882 94.2%	-	-	-	\$152,689 100.0%

¹ May include fixed income due within a year.

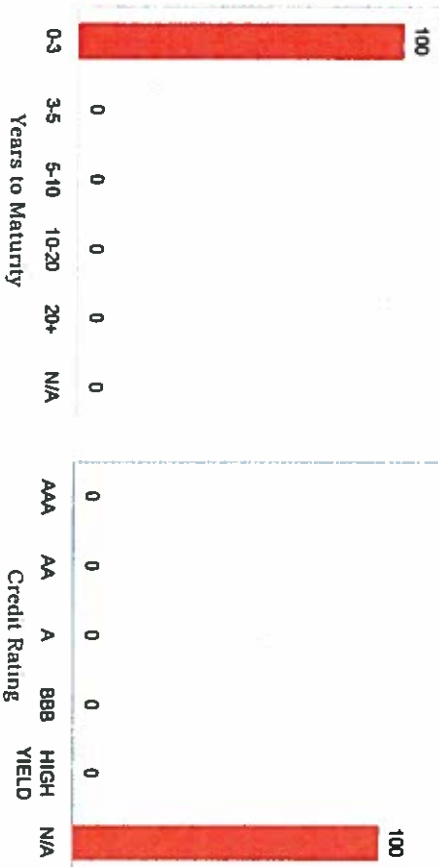
If external holdings were provided, they have been included in this report in order to provide you with a more complete picture of your financial holdings. Please note: Morgan Stanley Smith Barney LLC is not responsible for information (including valuations) from external sources. Please contact your financial advisor to update your information.

Composite Analysis prepared for R.S.C.C.D. FOUNDATION as of 05/29/15

Fixed Income

Maturity Schedule (%)

Credit Rating (%)



Fixed Income

Top Holdings

Security Name	Market Value	% of Fixed
VANGUARD SHORT TERM CORPORATE	\$109,630	76.2
DOUBLELINE TOTAL RETURN I	34,253	23.8
Total Fixed Income Top Holdings	143,882	100.0
Total Fixed Income	143,882	100.0

Equities

This Household does not contain any Composite Equity Holdings

If external holdings were provided, they have been included in this report in order to provide you with a more complete picture of your financial holdings. Please note: Morgan Stanley Smith Barney LLC is not responsible for information (including valuations) from external sources. Please contact your financial advisor to update your information.

Advisory Accounts Allocation prepared for R.S.C.C.D. FOUNDATION as of 05/29/15

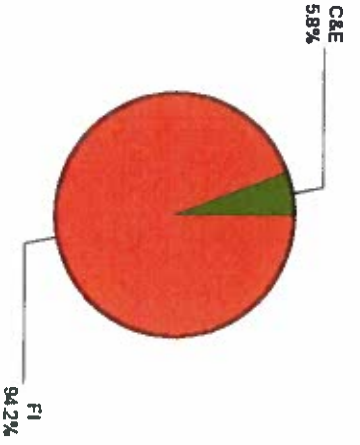
Top Managers

Manager Name	Market Value	Portfolio % of
Consulting Group Advisor	152,689	100.0
Top Managers Total	152,689	100.0
Total Advisory	\$152,689	100.0

Asset Allocation

Asset Class	Market Value	% of Total
Cash & Equivalents	\$8,807	5.8
Fixed Income	\$143,882	94.2
Equities	-	-
Alternative Investments	-	-
Other	-	-
Total	\$152,689	100.0

Asset Allocation



Style Analysis

Equity (% of Household)
Domestic

Value	Core	Growth	
0.0	0.0	0.0	Large Size
0.0	0.0	0.0	Medium Size
0.0	0.0	0.0	Small Size

International Other

Core	Emerg	Other
0.0	0.0	0.0

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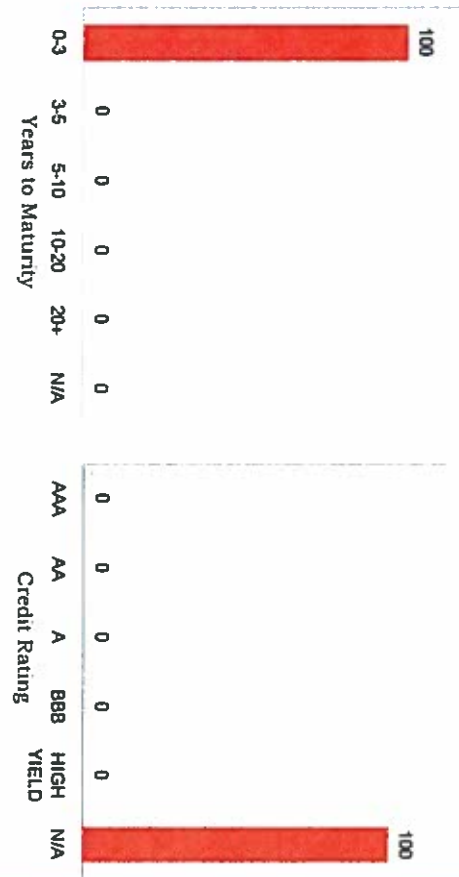
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Advisory Accounts Analysis prepared for R.S.C.C.D. FOUNDATION as of 05/29/15

Fixed Income

Maturity Schedule (%)

Credit Rating (%)



Fixed Income

Top Holdings

Security Name	Market Value	% of Fixed
VANGUARD SHORT-TERM CORPORATE	\$109,630	76.2
DOUBLELINE TOTAL RETURN I	34,253	23.8
Total Fixed Income Top Holdings	143,882	100.0
Total Fixed Income Top Holdings	\$143,882	100.0

Equities

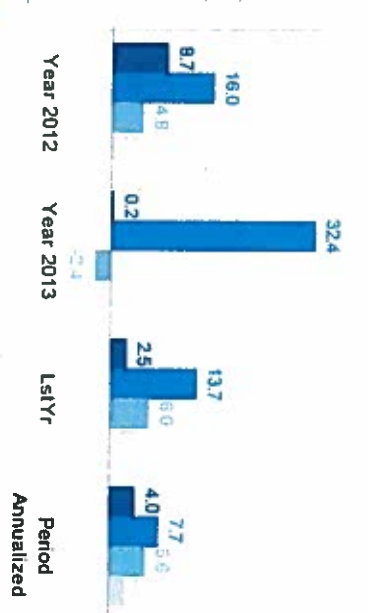
This Household does not contain any Advisory Equity Holdings

If external holdings were provided, they have been included in this report in order to provide you with a more complete picture of your financial holdings. Please note: Morgan Stanley Smith Barney LLC is not responsible for information (including valuations) from external sources. Please contact your financial advisor to update your information.

Morgan Stanley Composite Performance prepared for R.S.C.C.D. FOUNDATION as of 05/29/15

Portfolio Returns (%)¹
Morgan Stanley Accounts Only

Year	Annualized			
	Year 2012	Year 2013	Year 2014	For the Period
12/31/11 to 12/31/12	8.7	0.2	2.5	4.0
12/31/12 to 12/31/13				
12/31/13 to 12/31/14				
12/31/14 to 05/29/15				



Account Performance¹
Morgan Stanley Accounts Only

Account No.	Account Name (Type)	Market Value	Return (%)				Date of Inception	Inception Value
			Year 2012	Year 2013	Year 2014	Since Inception		
		\$152,689	8.7	0.2	2.5	4.0	12/31/96	\$538,086

Advisory
202-212548 R.S.C.C.D. FOUNDATION (Consulting Group Advisor)
Consulting Group Advisor 152,689 8.7 0.2 2.5 4.0 12/31/96 538,086

¹The investment results depicted here represent a net return after the deduction of advisory fees for Morgan Stanley accounts only.

If external holdings were provided, they have been included in this report in order to provide you with a more complete picture of your financial holdings. Please note: Morgan Stanley Smith Barney LLC is not responsible for information (including valuations) from external sources. Please contact your financial advisor to update your information.

12.XI

Morgan Stanley Composite Performance prepared for R.S.C.C.D. FOUNDATION as of 05/29/15

Account Performance¹
Morgan Stanley Accounts Only

Account No.	Account Name (Type)	Market Value 05/29/15	Return (%)			Date of Inception	Inception Value	
			Year 2012 12/31/11 to 12/31/12	Year 2013 12/31/12 to 12/31/13	Year 2014 12/31/13 to 12/31/14			Annualized Since Inception to 05/29/15
	Total Advisory	\$152,689	8.7	0.2	2.5	4.0	12/31/96	\$538,086
	Total Net Time Weighted Returns	\$152,689	8.7	0.2	2.5	4.0	12/31/96	\$538,086

¹ The investment results depicted here represent a net return after the deduction of advisory fees for Morgan Stanley accounts only.

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Disclaimers prepared for R.S.C.C.D. FOUNDATION as of 05/29/15

General Disclosures

Information Disclosures:

This performance report has been prepared for your information only and is not a substitute for your official Morgan Stanley Smith Barney LLC account statements. Do not use the information in this report as the sole basis for investment decisions, nor take action relying on this information without confirming its accuracy and completeness. Please carefully review the attached glossary. Past performance is not a guarantee of future results.

Information is approximate: The information in this report is approximate and subject to updating, correction and other changes. We are not obligated to notify you if information changes. If there are discrepancies between your official account statement and this report, rely on your official account statement. Prices shown in your official account statement may differ from the prices shown in this report due to, among other things, different reporting methods, delays, market conditions and interruptions. Also, the figures in this report do not include all relevant costs (e.g., fees, commissions and taxes).

We obtain pricing and other information from various standard quotation services and other sources which we believe to be reliable, but we do not warrant or guarantee the accuracy or completeness of this information. The price that you would actually receive in the market for any investment may be higher or lower than the price shown in this report. The prices of securities and other investments not actively traded may be estimated or may not be available. For example:

- **Bonds trading less frequently:** We rely on outside pricing services or a computerized trading model, which cannot always give us actual market values.
- **Annuities:** Data in this report may have been provided by third party insurance carriers. (Not all insurance carriers provide data on annuities for performance calculations. The list of providers that provide data is available on request. Performance calculations are based on annuity values as of December 31, 2006 or later, depending on carrier participation.) This report might not reflect a transaction that posted at the insurance company before this reporting period. Depending on the carrier, annuities transactions may be net of certain fees or expenses.
- **Alternative investments:** The assets in these investments (and in corresponding benchmark indices) are difficult to value, values may be several weeks or more old, and the index values reflect pricing from multiple sources. Index values may be more up-to-date than the data for the alternative investments shown in this report. This report shows the latest generally available alternative investment and index data as of the date of this report.
- **Non-traded Real Estate Investment Trusts (REITs) and certain other investments:** These are illiquid and have no public markets.
- **For floating rate securities, the estimated accrued interest and estimated annual income are based on the current floating coupon rate and may not reflect historic rates within the accrual period.**

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This investment evaluation is directed only to the client for whom the evaluation was performed. The underlying data has been obtained from sources considered to be reliable but its accuracy and completeness cannot be assured. This evaluation is for informational purposes only and is not intended to be an offer, solicitation, or recommendation with respect to the purchase or sale of any security. Performance for periods greater than one year is annualized. This information is being provided at your request and does not replace or supersede your monthly client account statement.

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Asset classifications and performance calculation methodologies can differ among the various supplemental performance reports available through us. For example, some reports calculate Time Weighted performance using a weighted or Modified Dietz approach while others use a daily approach. In addition, some reports may display Dollar Weighted Returns. These differences can generate meaningful dispersions in the performance numbers displayed on different reports.

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Classifications of Assets:

The security classifications in this report are based on information from several sources including: Morningstar, Moody's, Standard & Poor's and Morgan Stanley Investment Research. For the purposes of this report, fixed income assets that mature within 1 year may be classified as cash if they are a packaged product, or classified as fixed income if they are an individual security. Equity assets may be categorized based on their Capitalization as Large Cap, Mid Cap or Small Cap. Large Cap is defined as equities in the top 70 percent of investible market capitalization, Mid Cap is defined as the next 20 percent of investible market capitalization and Small Cap is defined as the next 7 percent of investible market cap. An "N/A" credit rating represents fixed income products that are not covered by S&P or Morningstar (or Moody's Rating). An "N/A" maturity rating represents fixed income products that are not covered by S&P or Morningstar (or Moody's). As a firm we classify assets based on general characteristics such as: asset type, underlying capital structure, and issuing organization. As many assets contain characteristics of more than one asset class, this asset classification may differ from others you may receive. These classifications are not intended to serve as a suitability analysis. For more information on asset classification methodology, please contact your Financial Advisor.

Advisory accounts are classified according to the underlying holdings of the account.

Income Summary:

Current Year Estimated and 12 Month Forward projected income figures are based on a combination of stated interest and/or dividend yield, as well as recent payment history, and are not a guarantee of future payments.

Benchmarks, Charts and Graphs:

Benchmark indices are provided for general reference purposes only. Indices are unmanaged and do not reflect payment of any expenses, fees or sales charges an investor would pay to purchase the securities it represents. Such costs would lower performance. You cannot invest directly in an index. An index's past performance is not a guarantee of future results. Index values for certain types of investments (e.g. alternative investments) are approximate and subject to updating, correction and other changes. Charts and graphs are for illustrative purposes only and are not intended to represent the performance of any Morgan Stanley Smith Barney LLC offering. Also, if your account was enrolled in performance reporting prior to May 1, 2003, your gross portfolio returns and the returns for all comparative indices have a start date of the month following the account's inception date. Additionally, the following indices are available only on a monthly basis and are, therefore, measured from the beginning of the month following the account's inception: CPI, IFC Investible Emerging Markets, National Association REIT, Wiltshire REIT, all Merrill Lynch Investment Grade Convertible and the Merrill Lynch High Yield Master.

Performance Calculations

Contribution / Withdrawal Valuation:

The total value of capital contributed to or withdrawn from the account during the reporting period. The dollar amount represented by contribution or withdrawal transactions is excluded from the calculation of Portfolio Appreciation.

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Disclaimers prepared for R.S.C.C.D. FOUNDATION as of 05/29/15

Time Weighted Rate of Return:

Time Weighted Rate of Return (TWR) measures an account's compounded rate of growth over the specified time period. TWR is the return produced over time by an account independent of contributions or withdrawals. TWR is used to compare an account's performance to relevant benchmark indices (e.g. S&P 500). Different methodologies for calculating performance at the Household/Portfolio level and the Account level exist, making it possible for returns to be slightly different depending on the level being displayed. Households/Portfolios and Accounts with a historical period use a Modified Dietz calculation while Accounts with no historical periods use Modified Dietz but revalue on dates of large cash flows.

Morgan Stanley Accounts

Historical Data:

Portfolio Minder provides a life view of an account's history with the firm and will include performance to the original performance inception of the account. Performance inception date does not necessarily correspond to account inception. Please reference the inception column to establish performance coverage.

Return Reconciliation

Although checks and balances are in place, we strongly encourage you to review all returns carefully. This is especially true for returns up to a current date. Daily performance data is un-reconciled and is intended for illustrative purposes only. The CSG Performance Group will not reconcile daily performance inquiries.

Unsupervised Assets:

This report utilizes the total account view. Unsupervised assets contained within advisory accounts have been included under the advisory section and will be taken into account for both market value and performance.

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RANCHO SANTIAGO

Community College District

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Santa Ana College • Santiago Canyon College

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- 1 3-year membership term,
 July 2011 – June 2014
- 2 3-year membership term,
 July 2013 – June 2016
- 3 July 2014 – June 2017
 3-year membership term
- 4 3-year membership term
- 5 Ex-Officio members-non voting
- 6 Appointed annually
 December 2013 – December 2014
- 7 Permanent membership

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Ex-Officio Non Voting Members: John Didion • Dr. Erlinda Martinez • Dr. John Weispfenning

EXECUTION VERSION

CAPABILITY BUILDING CONTRACT

DATED __ – JUNE, 2015

COLLEGES OF EXCELLENCE COMPANY

and

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT FOUNDATION

and

AL KHALEEJ TRAINING AND EDUCATION CORPORATION

**for the enhancement of performance output at technical and vocational colleges
in the Kingdom of Saudi Arabia**

ALLEN & OVERY

Allen & Overy LLP

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THIS AGREEMENT is made as of ___st June 2015

BETWEEN:

- (1) **COLLEGES OF EXCELLENCE COMPANY**, a limited liability company incorporated under the laws of Saudi Arabia whose registered office is at Granada Oasis Business Park, Building A4, 9th Floor, 2646, Riyadh 13241-7180 (the **Procurer**), a wholly owned government entity and a subsidiary of the Technical and Vocational Training Corporation (TVTC);
- (2) **RANCHO SANTIAGO COMMUNITY COLLEGE FOUNDATION**, a United States tax-exempt educational corporation organized and existing under the laws of the State of California, whose registered office is at 2323 North Broadway, Santa Ana, California, US 92706 (**Rancho**); and
- (3) **AL KHALEEJ TRAINING AND EDUCATION CORPORATION**, a public joint stock company organized and existing under the laws of the Kingdom of Saudi Arabia, with its principal business address located at Burj Al Khaleej Training and Education, Olaya Street, 5th Floor, Riyadh, Kingdom of Saudi Arabia (**Al Khaleej**),

(**Rancho and Al Khaleej together constitute the Training Provider**),

WHEREAS:

- (A) The Procurer is a limited liability company which has been established by Takamol (as defined below) and TVTC for the purpose of promoting training and vocational colleges in Saudi Arabia.
- (B) The Procurer aims to improve the standards of training and vocational colleges in Saudi Arabia and the Training Provider wishes to carry out the services necessary to achieve such aims.
- (C) This Agreement sets out the terms agreed between the Procurer and the Training Provider for the provision of the Services (as defined below).

NOW IT IS AGREED as follows:

1. GENERAL PROVISIONS

1.1 Definitions

In this Agreement, the following words and expressions shall have the meanings set out below, except where expressly set out otherwise.

Academic Year means (i) in respect of the first Academic Year, from 19 May 2015 to 30 June 2015 and from 18 August 2015 to 30 June 2016; (ii) in respect of the second Academic Year, from 28 August 2016 to 18 July 2017; and (iii) in respect of the third Academic Year, the dates to be notified by the Procurer at least ninety (90) days prior to the start of the third Academic Year.

Accet means the Accreditation Counsel for Continuing Education and Training.

Accet Accreditation means the accreditation process carried out in respect of each of the Colleges by Accet pursuant to Clause 17.3.

Actual Base Payment means the aggregate of the actual Base Payments payable to the Training Provider at the end of each Academic Year following deduction of any amounts in accordance with Clause 6.3 and Schedule 4.

Advance Base Payment means the estimated Base Payment paid in advance to the Training Provider pursuant to Clause 6.2.

Advance Payment Bond means the bond to be provided by the Training Provider in accordance with Clause 8(a).

Affiliate means, with respect to any person, any other person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such person. For the purposes of this definition, **control** means direct or indirect ownership of one hundred per cent (100%) of the issued share capital.

Ancillary Services means the services listed in Schedule 12, and such other services as may be agreed between the Training Provider and the Procurer from time to time.

Annual Budget has the meaning set out in Schedule 7.

Annual Performance Report has the meaning set out in Schedule 7.

Annual Report has the meaning given to that term in Clause 6.5(b).

Applicable Laws means all published laws, treaties, regulations, standards, decrees, rules, decisions, judgments, orders, injunctions, authorisations, directives, permits, licences or authorisations, which are now, or may in the future become, applicable to the performance of the Services and the operation of the Colleges.

Authorisations means the Training Provider's Authorisations and the Procurer's Authorisations.

Base Payment has the meaning set out in Schedule 4.

Bond Amount has the meaning given to that term in Clause 9.2(a).

Business Day means any day that is not a Friday or Saturday, during which banks are generally open for business in Saudi Arabia.

Capital Expenditure has the meaning given to that term in Clause 4.5

Change in Control means a direct or indirect change in Control of a Party (whether through merger, spin-off, sale of shares or other equity interests, or otherwise) through a single transaction or series of related transactions.

Change in Law means any change in the Applicable Laws of Saudi Arabia (including the introduction of new Applicable Laws and/or the repeal or modification of existing Applicable Laws) or the NOSS after the Effective Date.

Colleges means the training and vocational Colleges and any relevant branches listed in Schedule 1 and **College** means any one of them.

College Assessment has the meaning given to that term in Schedule 7.

College Assessment and Improvement Plan means the overall Deliverable set out in Schedule 7.

College Board has the meaning given to that term in Clause 5(b).

College Dean means the person appointed to the role of Dean in each of the Colleges by TVTC.

College Improvement Plan has the meaning given to that term in Schedule 7.

Confidential Information has the meaning given to that term in Clause 30.1.

Control means the ownership directly or indirectly of fifty percent (50%) or more of the voting rights in a legal entity.

Cost means all expenditure reasonably incurred (or to be incurred) by the Training Provider including overheads and similar charges, but does not include profit.

Curricula Improvement Plan has the meaning given to that term in Schedule 7.

Deliverables means the Service Reports and the Performance Reports.

Developed IPR has the meaning given to that term in Clause 6.5(b)25(a).

Dispute has the meaning given to that term in Clause 33.2.

Disputed Amount has the meaning given to that term in Clause 7.2(a).

Effective Date has the meaning given to that term in Clause 2.1(b).

Equivalent Qualifications means international qualifications agreed in writing by the Procurer from time to time.

Fee means the total fees payable by the Procurer to the Training Provider in respect of all Colleges over the course of the Initial Term as set out in Schedule 4.

Good Industry Practice means the exercise of that degree of skill, diligence and prudence that would reasonably and ordinarily be expected from a skilled, prudent and experienced international education provider applying the standards generally adopted by a skilled, prudent and experienced international education provider performing operation and maintenance services of a similar scope and nature as the Services under this Agreement.

Governmental Authority means any government whether federal, state, provincial or municipal, or any ministry, department, court, commission, board, branch, agency, institution or similar authority of any such government.

Initial Costs has the meaning given to that term in Clause 6.1.

Initial Term means the period ending on the last day of the third full Academic Year following the Effective Date, being a date no later than 30 June 2018.

Institutional Review means the annual institutional review carried out in respect of each College pursuant to Clause 17.1 in accordance with the assessment framework developed by SSS and/or TVTC.

Institutional Review Grade means the grade awarded to the College following an Institutional Review.

Intellectual Property means all intellectual and industrial property, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, trade name, trade secret, business name, discovery, invention, process, formula, know-how, rights of confidence, improvement, technique, copyright, rights in computer software, unregistered design

rights, technical information or drawings, database rights, and rights in the nature of unfair competition and rights to sue in passing off, and including in each case any pending applications or rights to apply for registration of any of these rights, and any analogous rights to any of these rights, wherever in the world arising.

JV Leader has the meaning given to that term in Clause 2.3(b).

Key Personnel means those Personnel agreed between the Parties to be nominated to the key positions listed in Schedule 9 by the respective deadlines set out therein, as such list may be updated from time to time following agreement between the Parties.

KPI Payment has the meaning given to that term in Schedule 4.

Milestone means the milestones listed in Schedule 4.

Milestone Payment has the meaning given to that term in Schedule 4.

NOSS means the national occupational skills standards which are developed by SSS as may be updated from time to time.

Other Force Majeure has the meaning given to that term in Clause 21.1(a).

One-Year Employment Rate means the number of College graduates who are employed on a full-time basis twelve (12) months following the date of graduation.

Parent Company Guarantee has the meaning given to that term in Clause 10(a).

Parties means the Procurer and the Training Provider and **Party** means either of them as the context so requires.

Performance Bond has the meaning given to that term in Clause 9.2.

Performance Payment has the meaning given in Schedule 4.

Performance Reports means the reports set out in Schedule 7.

Persistent Breach means (i) the submission of three consecutive Deliverables more than four weeks after the due date for submission set out in Schedule 4 or (ii) where performance does not meet the Starting Level for two consecutive Academic Years.

Personnel means:

- (a) the Training Provider's Representative;
- (b) the Key Personnel; and
- (c) all other staff, labour and other employees of the Training Provider.

Personnel Quota means the number of Personnel guaranteed by the Training Provider for the purposes of the Training Quota as set out in Part 2 of Schedule 11.

Project means the improvement of performance of the Colleges through the provision of the Services by the Training Provider.

Prohibited Activities means the activities listed in Schedule 8.

Political Force Majeure has the meaning given to that term in Clause 19.1(a).

Procurer's Authorisations means all licences, consents, permits, authorisations and other approvals which may be required under any Applicable Laws in order for the Training Provider to provide the Services, and which are legally required to be in the name of the Procurer and/or can only be applied for by the Procurer.

Procurer's Representative has the meaning given to that term in Clause 14(b).

Proposal means the proposal submitted as part of the Training Provider's technical bid dated 5 December 2014 including all clarifications and amendments.

RFP means the request for proposal issued by the Procurer on 16 October 2014 in respect of the provision of the Services.

SAR means Saudi Arabian Riyals, the lawful currency of the Kingdom of Saudi Arabia.

Saudi Skills Standards or SSS means Saudi Skills Standards LLC, a limited liability company organised and existing under the laws of the Kingdom of Saudi Arabia whose office is at Granada Oasis Business Park, Building A4, 6th Floor, Riyadh, established to act as a regulator of technical and vocational training in the Kingdom of Saudi Arabia.

Scope of Services means the document set out in Schedule 2 as may be updated from time to time in accordance with this Agreement.

Services means the services set out in the Scope of Services and any and all work and/or services reasonably incidental thereto to be performed by the Training Provider.

Service Reports means the reports set out in Schedule 7.

Signing Date means the date on which this Agreement is signed by both Parties.

SSS Qualifications means the official trainer qualifications developed and awarded by SSS.

Start-Up Period means the period prior to the Signing Date during which period the Training Provider will develop the College Assessment and Improvement Plan.

Starting Level means the minimum performance level for the purposes of calculating the KPI Payment as set out in Schedule 4.

Suitable Replacement has the meaning set out in Clause 13.2(f).

Takamol (previously known as Hadaf Holding Company for Business Services Ltd), means Takamol Holding Company for Business Services Ltd., a limited liability company incorporated in Saudi Arabia wholly owned by TVTC and the HRDF.

Term has the meaning given to that term in Clause 3.2.

Training Provider Head means the person appointed to that role in Schedule 9, as such person may be replaced from time to time in accordance with the terms of this Agreement.

Training Provider IPR means all of the right, title and interest of the Training Provider in and to its Intellectual Property and other proprietary rights, whether owned as of the Signing Date or subsequently developed or acquired by it. Where the Training Provider comprises two or more

persons, the term **Training Provider IPR** refers to the Intellectual Property and other proprietary rights of each such person, as owned by such person during the Term of this Agreement.

Training Provider's Authorisations means all licences, consents, permits, authorisations and other approvals which may be required under any Applicable Laws in order for the Training Provider to provide the Services and perform its obligations herein and which are legally required to be in the name of the Training Provider and/or can only be applied for by the Training Provider.

Training Provider's Proposal has the meaning given to that term in Clause 18.2(a).

Training Provider's Representative has the meaning given to that term in Clause 14(a).

Training Quota has the meaning given to that term in Clause 13.3.

Training Requirements means the minimum training requirements and standards to be implemented and maintained by the Training Provider, as more specifically set out in Schedule 11.

Trimester means, in respect of the first Trimester from 19 May 2015 to 30 June 2015 and from 18 August 2015 to 26 November 2015 and in respect of all other Trimesters, the dates to be notified by the Procurer at least ninety (90) days prior to the start of each Academic Year as being the start date and end date for each Trimester for that Academic Year.

Trimester Performance Report has the meaning set out in Schedule 7.

Variation means any change to the Scope of Services or this Agreement which is instructed or approved as a variation under Clause 18.

1.2 Interpretation

In this Agreement, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word **agree**, **agreed** or **agreement** require the agreement to be recorded in writing;
- (d) references to a **person** (or to a word importing a person) shall be construed so as to include that person's successors in title and assigns or transferees, and also be construed as including an individual, firm, partnership, trust, joint venture, company, unincorporated body, associated organisation, any government or state or any agency of a government or state, or any local or municipal authority or other government body (whether or not in each case having separate legal personality);
- (e) **written** or **in writing** means handwritten, typewritten, printed or electronically made, and resulting in a permanent record;
- (f) **include**, **including** and **included** (or similar words or expressions) shall be deemed to be followed by the expression "without limitation" or "but not limited to" whether or not they are followed by such phrases or words of like import;
- (g) **day** means a calendar day and **year** means 12 calendar months;

- (h) references to this Agreement or to any other document shall be construed as references to this Agreement or that other document, as amended, varied, novated, supplemented or replaced from time to time;
- (i) references to Clauses and Schedules are to Clauses of and Schedules to this Agreement;
- (j) if an obligation of either Party falls on a day that is not a Business Day, the due date for the performance of the obligation will be the immediately subsequent Business Day;
- (k) a reference to any thing is a reference to the whole and each part of it; and
- (l) headings and recitals are for convenience only and shall not be taken into consideration in the interpretation of this Agreement.

1.3 Priority of Documents

For the purposes of interpretation, in the event of any ambiguity, inconsistency or conflict between the documents listed below, the priority of documents shall be as in accordance with the following sequence:

- (a) Clauses 1 to 35 (inclusive) of this Agreement;
- (b) the Scope of Services;
- (c) all other Schedules;
- (d) the RFP;
- (e) the Proposal; and
- (f) other documents (if any) expressly stated to form part of this Agreement.

2. EFFECTIVENESS

2.1 Effective Date

- (a) Subject to Clause 2.1(c), this Agreement shall enter into full force and effect on the Signing Date.
- (b) Within fifteen (15) days of receipt of the relevant items referred to in Clause 2.2(a), the Procurer shall provide a written notice to the Training Provider confirming that each of the conditions precedent set out in Clause 2.2(a) have been satisfied or waived (the **Effective Date**).
- (c) Until the occurrence of the Effective Date, Clauses 6.2 to 6.5 of this Agreement shall not enter into force.

2.2 Conditions Precedent

- (a) The conditions precedent are receipt by the Procurer of:
 - (i) the Parent Company Guarantee, duly executed by the guarantor, to the extent required pursuant to Clause 9.1(a)(i);
 - (ii) the Performance Bond duly executed by the issuing financial institution;

- (iii) evidence of the Training Provider having obtained the Authorisations which it is required to obtain under Clause 16.1; and
 - (iv) evidence of novation of this Agreement in accordance with Clause 29(a) to an Affiliate incorporated under the laws of Saudi Arabia for the purposes of fulfilling the obligations of the Training Provider under this Agreement.
- (b) On and from the Signing Date, the Training Provider shall, as soon as practicable, satisfy or procure the satisfaction of each condition precedent to the Effective Date under this Clause 2.

2.3 Joint and Several Liability

- (a) To the extent that the Training Provider constitutes a consortium of two or more persons (each being a Member), the Members of the Training Provider are each in their individual capacity jointly and severally liable to the Procurer for the performance or non-performance of all obligations and duties to be performed by the Training Provider under the terms and conditions of this Agreement.
- (b) The Members hereby appoint Rancho as their leader (the JV Leader). The JV Leader has sole authority to bind the Training Provider and each of the Members for all matters related to this Agreement. Rancho's appointment as JV Leader may not be revoked without the prior written consent of the Procurer.

3. APPOINTMENT OF THE TRAINING PROVIDER AND THE TERM

3.1 Appointment of the Training Provider

The Procurer appoints the Training Provider to provide, and the Training Provider agrees to provide, the Services pursuant to and in accordance with the terms of this Agreement.

3.2 Term

Subject to Clause 2, unless terminated earlier in accordance with Clause 23, this Agreement shall commence on the Signing Date and continue in full force and effect until the later of the last day of:

- (a) the Initial Term; and
- (b) any extension to the term granted in accordance with Clause 3.3, (the Term).

3.3 Extension of Term

- (a) Not later than six (6) months prior to the expiry of the current Term, the Procurer may notify the Training Provider in writing of its desire to extend the Term by an additional period of one (1) year starting from the expiry date of the current Term, together with the terms on which such extension will be granted, including any change to the Fee.
- (b) The Training Provider shall have thirty (30) days from the date of any notice from the Procurer pursuant to Clause 3.3(a) to either accept or reject the extension. If the Training Provider fails to accept or reject such extension within the thirty (30) day period, the Term shall be deemed to have been extended in accordance with the Procurer's notice.

3.4 The Role of TVTC

- (a) The Training Provider acknowledges and agrees that TVTC is the existing operator of the Colleges and employs the College staff. As such, the Procurer will refer all decisions regarding the operation of the Colleges, management of the College staff (including performance reward schemes) and any material Capital Expenditures to TVTC for approval.
- (b) The Procurer will be solely responsible for administering this Agreement and making all payments set out in this Agreement. The Procurer will also be the beneficiary of all security posted by the Training Provider in accordance with the terms of this Agreement.

4. SERVICES

4.1 General

On and from the Signing Date, the Training Provider shall provide the Services in respect of each College in accordance with this Agreement.

4.2 Standard of Performance

- (a) The Training Provider shall perform the Services:
 - (i) in a safe and reliable manner;
 - (ii) in accordance with the Scope of Services, the Training Requirements, the Proposal, the NOSS, all Applicable Laws, all applicable TVTC policies and procedures and Good Industry Practice;
 - (iii) in accordance with any national values and beliefs in Saudi Arabia;
 - (iv) to safeguard the integrity and service life of each College;
 - (v) to ensure that all relevant safety policies and procedures are implemented to ensure the health and safety of each student, the College staff and the Personnel;
 - (vi) so as not to cause a breach of any Authorisations;
 - (vii) in co-operation with any relevant Governmental Authority, including local and national education authorities; and
 - (viii) in accordance with the Deliverables.
- (b) If at any time the Procurer is of the opinion that the Training Provider is not performing the Services in accordance with Clause 4.2(a), the Procurer shall so notify the Training Provider providing details of such non-compliance and the Training Provider shall immediately take such steps as are required in order to remedy such non-compliance.
- (c) The Training Provider shall not carry on any Prohibited Activities and, to the extent it becomes aware of any Prohibited Activities being carried on at the College, shall notify the Procurer of such Prohibited Activities immediately upon becoming so aware.

4.3 Deliverables

- (a) The Training Provider shall prepare the Service Plans and the Performance Reports in accordance with Schedule 7 (the Deliverables).

- (b) The Training Provider shall submit full and proper versions of the Deliverables by no later than the respective deadlines set out in Schedule 4. The Procurer shall consider each proposed Deliverable and, within 5 business days of receipt, either accept or reject the proposed Deliverable as having been properly submitted. If the Procurer neither accepts nor rejects the submission of a Deliverable within five (5) business days of receipt, the Deliverable shall be deemed to be submitted at the end of that five (5) business day period. A Milestone shall be deemed achieved for the purposes of Schedule 4 on the date on which the Procurer accepts the relevant Deliverable as having been properly submitted.
- (c) Within forty five (45) days of the date on which the Procurer accepts a Deliverable as having been properly submitted in accordance with Clause 4.3(b), the Procurer shall consider the proposed Deliverable and shall have the right to request amendments to be made. During such 45-day period, the Training Provider shall promptly provide to the Procurer all supplemental information as may be reasonably requested by the Procurer and, at the request of the Procurer, shall meet with the Procurer to explain and discuss the proposed Deliverables.
- (d) If the Procurer requests amendments to a proposed Deliverable, the Training Provider shall, within thirty (30) days after receipt of such request, submit to the Procurer the revised Deliverable incorporating the amendments requested by the Procurer except those which, in the reasonable and professional opinion of the Training Provider acting in accordance with Good Industry Practice (i) would prevent the Training Provider from performing its obligations in accordance with Clause 4.2, or (ii) would cause the Training Provider to be in breach of any other provision of the Agreement. When submitting the amended Deliverables to the Procurer, the Training Provider shall identify any amendments requested by the Procurer which have not been incorporated in the amended Deliverables, together with reasons for their omission. The Procurer shall then either approve or request further amendments to the Deliverables which the Training Provider shall be obliged to incorporate.

4.4 Changes to Deliverables

- (a) The Training Provider shall be entitled at any time during the course of an Academic Year to propose adjustments to any Deliverables if there has been a change in circumstances requiring an adjustment to the relevant Deliverable or because, in the reasonable opinion of the Training Provider, the proposed adjustment would assist the Training Provider in achieving the strategic objectives set out in Clause 4.2.
- (b) The Training Provider shall apply to the Procurer in writing for approval to such adjustments, setting out:
 - (i) details of the proposed adjustment;
 - (ii) the reasons for proposing the adjustment; and
 - (iii) any increase or reduction in costs resulting from such adjustment.
- (c) No adjustment shall be made to any Deliverable without the prior written consent of the Procurer.

4.5 Capital Expenditure

- (a) The level and type of capital expenditures to be implemented for each College shall be included in the College Improvement Plan and Annual Budget for that College which are to be submitted on an annual basis in accordance with Schedule 7 (**Capital Expenditures**).

- (b) The level and type of Capital Expenditures shall be reviewed and approved annually by the Training Provider and the Procurer.
- (c) The Training Provider is responsible for implementing all Capital Expenditures subject to receiving the prior written consent of the Procurer in respect of all such Capital Expenditures, including the following activities to the extent set out in Schedule 2:
 - (i) the procurement of materials and equipment;
 - (ii) hiring and supervising contractors and related personnel;
 - (iii) payment of suppliers and contractors in accordance with contract terms; and
 - (iv) monitoring project and budget execution to ensure that projects are implemented within the approved timetable and Annual Budget.

4.6 Training Provider's Acceptance of the Colleges

Subject to the terms of this Agreement, and subject further to the receipt from COE pursuant to Section 4.5 above of the minimum amount of Capital Expenditures reasonably required by the Training Provider in order to successfully perform its Services under this Agreement, the Training Provider acknowledges and agrees that it has been given access to each College and has fully acquainted itself, and is or will, at the later of the Signing Date or the date that all improvements are made upon application of the Capital Expenditures as indicated in the relevant Annual Budget, be satisfied with all local, regional and national conditions which could affect its performance of the Services including, the following:

- (a) the location of each College;
- (b) the equipment, facilities and resources needed for the performance of the Services;
- (c) the Applicable Laws, local customs, health and safety at work requirements, fiscal and social legislation and practices; and
- (d) generally, all and any other local conditions and/or other conditions of each College and their location that affect or may affect the performance of the Services and any other obligations of the Training Provider under this Agreement,

and the Training Provider therefore accepts all responsibility for having properly evaluated, as of the Signing Date, all costs and contingencies for successfully performing the Services and satisfying all other obligations of the Training Provider under this Agreement and agrees to bear all and any consequences resulting from any improper evaluation.

4.7 Ancillary Services

- (a) The Training Provider shall be responsible for the Ancillary Services, including the management of existing service contracts and the procurement of new service providers where, in the reasonable opinion of the Training Provider, new service providers are required.
- (b) No later than the day falling thirty (30) days after the end of each Trimester, the Training Provider shall submit to the Procurer an invoice for all reasonable and substantiated Costs incurred in respect of the Ancillary Services for the relevant Trimester. Any profit margin payable in respect of the Ancillary Services shall be agreed in advance with the Procurer.

5. COLLEGE MANAGEMENT

- (a) The College Dean for each College and the Training Provider Head will together constitute the senior management team for each College (the **Senior Management Team**). The Senior Management Team will be responsible for the overall direction of the management of the College in accordance with the College Improvement Plan and the Annual Budget. The Senior Management Team will use all reasonable endeavours to resolve any issues that arise in respect of the operation of the College and shall only escalate matters to the College Board as a last resort.
- (b) The Senior Management Team shall within two months of the Effective Date establish a College Board with a minimum of eight members, including the College Dean and the Training Provider Head (the **College Board**). Each of the College Dean and the Training Provider Head will be entitled to appoint an equal number of representatives to the College Board. The maximum number of members of the College Board will be agreed with the Procurer. Representatives of the Procurer and TVTC may be required to attend meetings of the College Board to assist in relation to the deliberations of the College Board from time to time on a non-voting basis. The College Board shall be the forum whereby any matter relating to the operation of the College can be discussed with the intention of ensuring the efficient operation of the College and avoiding disputes.
- (c) Any member of the Senior Management Team or the College Board may call a meeting of the College Board at any time after the Effective Date (as, when and where necessary) but in any case no less than two times per Trimester, and such meeting must take place no later than seven (7) days after being called. If no matters have been referred by the Senior Management Team for resolution by the College Board, the Senior Management Team shall provide the College Board with an update on College operations.
- (d) Decisions of the College Board shall be determined by a majority vote of members participating in a meeting provided at least one representative of the Training Provider is in attendance. Members may designate an alternate representative who shall have full voting powers and members, or such alternates, may attend by videoconference or by conference phone facility.
- (e) A decision signed by all of the members of the College Board shall be as valid and effectual as if it had been passed at a meeting of the College Board and may be contained in one or several documents each signed and approved by one or more members. A duly signed decision of the College Board shall be provided by the Training Provider to the Procurer within seven days of the decision being passed. The language of meetings shall be English.
- (f) The chairman of the College Board shall be the College Dean. The Training Provider Head shall have a casting vote in all decisions of the College Board. The Procurer shall be notified each time the casting vote is used by the Training Provider Head.

6. PAYMENT

6.1 Initial Costs

No later than the day falling thirty (30) days after the Signing Date, the Training Provider shall submit to the Procurer an invoice for the total amount of all reasonable and substantiated Costs incurred by the Training Provider during the Start-Up Period in respect of the preparation of the College Assessment and Improvement Plan for each College (the **Initial Costs**). Such invoice shall be payable in accordance with Clause 7.

6.2 Base Payment

- (a) No later than the day falling thirty (30) days after the Effective Date in respect of the first Trimester and no later than the day falling thirty (30) days prior to the start date of each subsequent Trimester, the Training Provider shall submit to the Procurer an invoice for the total estimated Base Payment (the **Advance Base Payment**) for the relevant Trimester.
- (b) Subject to Clause 7.2, the Procurer shall pay the Training Provider the Advance Base Payment in accordance with the invoice submitted pursuant to Clause 6.2(a) provided that the Training Provider has provided the Procurer with the Advance Payment Bond in accordance with the requirements of Clause 8.
- (c) If the Training Provider does not provide the Procurer with the Advance Payment Bond in accordance with the requirements of Clause 8, the Training Provider shall not be entitled to payment of the Advance Base Payment and shall submit to the Procurer an invoice for the total Base Payment for the relevant Trimester no later than the day falling thirty (30) days after the end of the relevant Trimester.

6.3 Actual Base Payment

No later than the day falling thirty (30) days after the end date of each Academic Year, the Training Provider shall submit to the Procurer:

- (a) a report identifying the number of the Personnel Quota who have complied with the Training Quota for each College; and
- (b) an invoice for the Actual Base Payment for the relevant Trimester, which shall be calculated in accordance with Schedule 4 on the basis of the information which has been provided pursuant to Clause 6.3(a).

6.4 Reconciliation

Following receipt of the report by the Procurer in accordance with Clause 6.3, if the aggregate of the Base Payments paid to the Training Provider in accordance with Clause 6.2 over the course of the Academic Year is more than the Actual Base Payment for the relevant Academic Year, then:

- (a) the Training Provider shall refund the Procurer an amount equal to the difference between the Base Payment and the Actual Base Payment within thirty (30) days of receipt of the report by the Procurer pursuant to Clause 6.3 (the **Reconciliation Amount**); or
- (b) the Procurer shall off-set the Reconciliation Amount against future Base Payments payable to the Training Provider until the amount of the Reconciliation Amount has been repaid in full to the Procurer.

6.5 Performance Payment

- (a) The Training Provider shall perform the Services with the aim of achieving payment of the full Performance Payment for each College.
- (b) On or before the last day of the Academic Year, the Training Provider shall submit to the Procurer a report (the **Annual Report**) summarising the Training Provider's assessment of its performance of the Services for that Academic Year with reference to the Milestone Payments and the KPI Payments for each College. The Annual Report shall identify the following:

- (i) in respect of the Milestone Payment, the number of instances where the Training Provider failed during the course of the Academic Year to comply with the Milestones and the resulting percentage that the Procurer is entitled to deduct from the Milestone Payment in accordance with Schedule 4;
- (ii) in respect of the KPI Payment:
 - (A) the SSS Institutional Review Grade;
 - (B) the total number of College training staff employed at each College at the end of the Academic Year together with the number of those College training staff who hold SSS Qualifications or Equivalent Qualifications; and
 - (C) the One Year Employment Rate.
- (c) Following receipt of the Annual Report, the Procurer shall, in respect of each College, proceed to determine the Performance Payments due to the Training Provider.
- (d) As soon as reasonably practicable following the end of the Academic Year, and in any event no later than sixty (60) days after the end of the Academic Year, the Procurer shall, in respect of each College, notify the Training Provider of the Performance Payments due in accordance with Schedule 4.
- (e) Following notification by the Procurer pursuant to Clause 6.5(d), the Training Provider shall submit to the Procurer an invoice for the amount of the aggregate of the Performance Payments for each College (broken down on a College-by-College basis).
- (f) If the Training Provider disagrees with a determination of the Procurer as to the appropriate Performance Payment payable pursuant to this Clause 6.5, such disputed amount shall be resolved in accordance with the provisions of Clause 7.2.

7. INVOICING AND PAYMENT

7.1 Payment

Subject to Clause 7.2, any invoices received by a Party pursuant to Clause 6 shall be paid by the relevant Party within thirty (30) days of receipt.

7.2 Disputed Amounts

- (a) If the Procurer reasonably disputes the Training Provider's entitlement to any part of the amount invoiced by the Training Provider pursuant to Clause 6, the Procurer shall notify the Training Provider as soon as reasonably practicable of the amount which is in dispute (the **Disputed Amount**).
- (b) The Procurer may withhold payment of any Disputed Amount pending agreement or determination of the Training Provider's entitlement to the Disputed Amount, but shall pay any undisputed amounts on the due date in accordance with Clause 7.1.
- (c) Within twenty (20) days of receipt by the Training Provider of any notice served by the Procurer pursuant to Clause 7.2(a), the Training Provider shall respond by notifying the Procurer as to whether or not it agrees with the statements made in that notice and if:

- (i) the Training Provider indicates that it does agree, or if the Training Provider fails to make such a response within the time limit, the Procurer shall be entitled to retain, on a permanent basis, any Disputed Amounts; or
- (ii) the Training Provider responds that it does not agree with all or any of the statements in the notice served by the Procurer pursuant to Clause 7.2(a), the matter or matters in dispute shall be determined by an independent expert appointed in accordance with Clause 33.1.
- (d) If the determination of any dispute conducted pursuant to Clause 7.2(c)(ii) shows that the Procurer has withheld any amount that the Training Provider was entitled to be paid, the Procurer shall promptly, and in any event no later than thirty (30) days after such determination, pay such amount to the Training Provider.

7.3 Set-off

- (a) The Training Provider shall not be entitled to retain or set off any amount due to the Procurer by it under this Agreement.
- (b) The Procurer may retain or set off any amount owed to it by the Training Provider against any amounts due to the Training Provider under this Agreement.

7.4 Audit

Pursuant to Clause 17.2, the Procurer shall have the right to, and may from time to time designate any responsible person to:

- (a) carry out inspection and audit tasks of a financial, technical or other nature in relation to the provision of Services, provided that such inspections and audits shall be carried out during normal business hours and shall not be disruptive to the students, the day to day operations of each College or the Training Provider's performance of its obligations pursuant to this Agreement; and
- (b) discuss the affairs, finances and accounts of the Training Provider which relate to this Agreement or are otherwise relevant to performance of the Services with the Training Provider's officers and staff at such time as may reasonably be requested.

8. ADVANCE PAYMENT BOND

- (a) As security for the payment of each Advance Base Payment, the Training Provider shall provide the Procurer with an unconditional and irrevocable on demand bond (the **Advance Payment Bond**) in amounts and currencies equal to the sum of the Advance Base Payment payable in respect of the relevant Trimester issued by a bank approved by the Procurer and in the form set out in Schedule 5.
- (b) The Training Provider shall ensure that the Advance Payment Bond is valid and enforceable until the expiry of the relevant Trimester for which the Advance Base Payment is made. If the expiry date of the Advance Payment Bond is likely to occur before the expiry of the relevant Trimester, then not less than twenty-eight (28) days prior to the expiry of the relevant Trimester, the Training Provider shall extend the validity of the Advance Payment Bond until the expiry of the relevant Trimester.
- (c) If the Training Provider does not extend the validity of the Advance Payment Bond as required under Clause 8(b), then the Procurer shall be entitled to call in the full amount of the Advance Payment Bond and hold it as cash security until such time as the Training

Provider supplies a replacement Advance Payment Bond acceptable to the Procurer. The Procurer will then return the cash retained as security to the Training Provider less such amounts as are required to cover the costs incurred by the Procurer as a result of such failure by the Training Provider.

- (d) The Procurer shall return the Advance Payment Bond to the Training Provider within twenty-one (21) days after the expiry of the relevant Trimester.

9. SECURITY

9.1 Security Options

- (a) As security for the performance of its obligations under this Agreement, the Training Provider may, subject to Clause 9.1(b), elect to provide either of the following forms of security package:
 - (i) an unconditional and irrevocable bond in the amount of ten per cent (10%) of the Fee in accordance with Clause 9.2, being an amount of SAR 10,302,100, together with a parent company guarantee in accordance with Clause 10; or
 - (ii) an unconditional and irrevocable bond in the amount of twenty per cent (20%) of the Fee in accordance with Clause 9.2, being an amount of SAR 20,604,200, with no parent company guarantee.
- (b) The Training Provider shall be obliged to:
 - (i) provide the form of security set out in Clause 9.1(a)(ii) if, in the opinion of the Procurer, the financial standing of the entity providing the parent company guarantee is not acceptable to the Procurer (as evidenced by the last three (3) years of audited financial accounts); or
 - (ii) replace the form of security set out in Clause 9.1(a)(i) with the form set out in Clause 9.1(a)(ii) if, during the course of the Initial Term, the financial standing of the entity providing the parent company guarantee is reduced to a level which is not acceptable to the Procurer (as evidenced by the last three (3) years of audited financial accounts).

9.2 Provision of Performance Bond

As security for the performance of its obligations under this Agreement, the Training Provider shall, at its own cost, obtain and deliver to the Procurer as a condition precedent to the Effective Date, a performance bond (the **Performance Bond**) that is:

- (a) an unconditional and irrevocable bond in the amount set out in Clause 9.1(a)(i) or Clause 9.1(a)(ii) (as applicable) (the **Bond Amount**);
- (b) in the form as set out in Schedule 6;
- (c) valid and enforceable until the expiry of the Term; and
- (d) issued by a bank established and authorised to carry out business in Saudi Arabia and approved by the Procurer.

9.3 Replacement of Performance Bond

- (a) The Training Provider shall ensure that the Performance Bond is valid and enforceable until the expiry of the Term. If the expiry date of the Performance Bond is likely to occur before the expiry of the Term, then not less than twenty-eight (28) days prior to the expiry of the Term, the Training Provider shall extend the validity of the Performance Bond until the expiry date of the Term.
- (b) If the Training Provider does not extend the validity as required under this Clause 9.3, the Procurer shall be entitled to call in the full amount of the Performance Bond and hold it as cash security until such time as the Training Provider supplies a replacement Performance Bond acceptable to the Procurer. The Procurer will then return the cash retained as security to the Training Provider less such amounts as are required to cover the costs incurred by the Procurer as a result of such failure by the Training Provider.

9.4 Return of Performance Bond

The Procurer shall return the Performance Bond to the Training Provider within twenty-one (21) days after the expiry or termination of this Agreement.

9.5 Call on the Performance Bond

- (a) The Procurer shall not be entitled to make a call on the Performance Bond unless:
 - (i) the Procurer has served a notice of default on the Training Provider in accordance with Clause 23.1(a); and
 - (ii) the Training Provider has failed to remedy the default in accordance with the requirements of Clause 23.1(b).
- (b) If the Procurer makes a call on the Performance Bond, the Training Provider shall promptly, and in any event within ten (10) days of any such call, deliver a replacement Performance Bond to the Procurer to ensure that the Performance Bond is of an amount equal to the Bond Amount.

9.6 Improper call of the Performance Bond

If the Procurer makes a call on the Performance Bond when it is not entitled to do so, or in an amount in excess of that which it is entitled to call on, the Procurer will immediately advise the entity providing the Performance Bond and return to the Training Provider the amount improperly claimed and indemnify the Training Provider for any costs it may have incurred as a result of any improper call.

10. PARENT COMPANY GUARANTEE

- (a) To the extent the Training Provider elects to provide a parent company guarantee in accordance with Clause 9.1(a)(i), the Training Provider shall, at its own cost, obtain and deliver to the Procurer as a condition precedent to the Effective Date a duly executed parent company guarantee (the **Parent Company Guarantee**) substantially in the form set out in Schedule 10.
- (b) Prior to making a claim under the Parent Company Guarantee, the Procurer shall notify the Training Provider stating the nature of the breach or default for which the claim is to be made.

11. OBLIGATIONS OF THE TRAINING PROVIDER

11.1 Reports

- (a) The Training Provider shall provide the Procurer with such reports, and in such format, as may be requested by the Procurer and shall comply with all reporting requirements prescribed by any Applicable Laws.
- (b) In addition, the Training Provider shall, to the extent that it is aware or should be aware, acting as a reasonable and prudent operator in accordance with Good Industry Practice, provide the Procurer with prompt written notice and copies of:
 - (i) any litigation or claims, disputes or actions, threatened or filed, concerning any College or the Services; and
 - (ii) any refusal or threatened refusal to grant, renew or extend, or any action pending or threatened that might affect the granting, renewal or extension of, any Training Provider's Authorisations.

11.2 Books and Records

The Training Provider shall maintain complete, accurate and up-to-date books, receipts and records which are pertinent to the performance of the Training Provider's obligations under this Agreement as well as expenses and costs incurred under this Agreement and payment thereof. The Training Provider shall ensure that such books and records are kept separate from its own books and records. The Training Provider shall retain all such books and records for five (5) years or, if longer, the relevant period required by Applicable Laws.

12. OBLIGATIONS OF THE PROCURER

- (a) The Procurer shall procure that TVTC grants the Training Provider the right to access and use of the Colleges for the purpose of providing the Services.
- (b) On or prior to the Effective Date, and for the duration of the Term, the Procurer shall provide (at no extra cost to the Training Provider) the services described in Schedule 3. The Training Provider shall be relieved from the performance of any of its obligations under this Agreement to the extent that performance of any such obligations is prevented as a direct result of a breach by the Procurer of this Clause 12(b), but shall not be entitled to additional Costs incurred by it as a direct result of any breach of this Clause 12(b) by the Procurer.

13. PERSONNEL

13.1 General

- (a) The Training Provider shall employ Personnel at the Colleges and shall be responsible for the supervision and management of all Personnel, including the recruitment, dismissal and removal of all Personnel at the Colleges until the termination or expiry of this Agreement.
- (b) The Training Provider shall ensure that it has sufficient numbers of Arabic speaking Personnel in the Colleges to ensure that the Services can be provided in accordance with the requirements of this Agreement.
- (c) The Training Provider shall implement and operate training courses for all Personnel at the Colleges to ensure that all such staff are adequately trained to perform their duties.

- (d) The Training Provider shall ensure that whilst any of the Personnel are at the Colleges, they shall observe and comply with all Applicable Laws and applicable rules and regulations relating to health, safety and security.
- (e) Subject to Clause 13.2, the Procurer shall be entitled to request in writing and obtain, at its discretion, the removal and replacement of any of the Personnel, at the Training Provider's expense, provided that the Procurer shall not exercise this right unreasonably.
- (f) The Training Provider warrants to the Procurer that all of the Personnel shall:
 - (i) be properly qualified, competent and sufficiently experienced to carry out the Services; and
 - (ii) comply at all times with the Training Requirements.

13.2 Key Personnel

- (a) The Training Provider must appoint and mobilise all Key Personnel as soon as reasonably possible following the Signing Date and in any event by no later than the respective deadlines set out in Schedule 9.
- (b) With effect from the Signing Date, the Training Provider shall provide the Procurer with a weekly status report regarding the employment and mobilisation of Key Personnel until such time as all Key Personnel have been employed and mobilised or the Procurer notifies the Training Provider in writing that such status reports are no longer necessary (whichever occurs first).
- (c) The Training Provider undertakes that each of the Key Personnel will devote the whole of his or her time, attention and skill to the performance of the Services and will not engage in any other employment. The Training Provider shall ensure that all Key Personnel are physically present at the College for at least forty five weeks per Academic Year.
- (d) The Training Provider shall ensure it appoints a sufficient number of Key Personnel to fill the Training Quota and the positions identified in the College Improvement Plan. The Training Provider shall notify the Procurer prior to revoking the appointment or accepting the resignation of any Key Personnel or appointing replacements.
- (e) If, in the reasonable opinion of the Procurer, the performance or conduct of any of the Key Personnel has been unsatisfactory, then the Procurer may issue a written warning notice to the Training Provider in respect of that person. If the Training Provider receives two written warning notices in respect of the same person, then the Training Provider shall promptly, and in any event within thirty (30) days of receipt of the second written warning notice, remove that person and shall appoint a replacement in accordance with the process set out in Clauses 13.2(f) and (g), unless otherwise agreed with the Procurer.
- (f) In the event that any member of the Key Personnel leaves his employment on the Project, then the Training Provider shall endeavour to arrange for a replacement by a person of comparable competence and experience (a **Suitable Replacement**) not later than 14 days prior to the original person leaving the Project, and in any event shall ensure that a Suitable Replacement is employed within thirty (30) days of the original person leaving the Project.
- (g) Not later than fourteen (14) days prior to appointing any member of the Key Personnel or a replacement member of the Key Personnel to perform any part of the Services, the Training Provider shall notify the Procurer and if so requested by the Procurer, submit the curriculum vitae of the proposed appointee to the Procurer for review. Where the Procurer has an

objection to, or requires further information in respect of, the proposed appointee, the Training Provider will propose an alternative appointee or provide the further information requested, which shall include providing the Procurer with an opportunity to interview the proposed appointee.

13.3 Training Quota

The Training Provider guarantees that the Personnel Quota will be provided on a full time equivalent basis of forty five (45) weeks per Academic Year (the **Training Quota**).

13.4 Visas

- (a) The Training Provider shall, at its own expense:
 - (i) ensure that all non-Saudi Personnel have the required visas and work permits; and
 - (ii) hold all authorisations, rights and licences required to properly provide the Services.
- (b) If the Training Provider is, or shall, be prevented from performing any of its obligations under this Agreement due to an inability to obtain the required visas or work permits in respect of any non-Saudi Personnel then, provided the Training Provider has made applications in a timely and proper fashion, the Training Provider shall be relieved from the performance of its obligations under this Agreement to the relevant extent until such time as the Training Provider is able to obtain the relevant visas and work permits.

13.5 Accommodation

The Training Provider shall be responsible for providing, at its own expense, residential accommodation for its Personnel.

14. REPRESENTATIVES

- (a) The Training Provider shall appoint a properly qualified, competent and experienced person to act as the Training Provider's representative (the **Training Provider's Representative**) in connection with the provision of the Services. The Training Provider shall ensure that the Training Provider's Representative is authorised and empowered to act for and on behalf of the Training Provider in all matters concerning this Agreement and the performance of the Training Provider's obligations under this Agreement.
- (b) The Procurer shall appoint an individual (the **Procurer's Representative**) to act as the representative of the Procurer. Subject to Clause 14(c), the Procurer shall ensure that the Procurer's Representative is authorised and empowered to act for and on behalf of the Procurer in all matters concerning this Agreement and the performance of the Procurer's obligations under this Agreement.
- (c) The Training Provider acknowledges and agrees that the Procurer's Representative is not authorised by the Procurer to agree any amendments or variations to this Agreement or any change to the Deliverables in accordance with Clause 4.4, and any such request by the Training Provider should be submitted to the Procurer in accordance with the notice provisions set out in Clause 35.

15. SAUDI CONTENT

In cases where goods or services required for the performance of the Services are available from both Saudi and non-Saudi suppliers, the Training Provider shall, and shall cause its subcontractors to, ensure that Saudi suppliers are invited to participate in the bidding or contracting process and, when the goods or services of such Saudi suppliers are reasonably equivalent in cost, quality and delivery time to the non-Saudi supplier goods or services, acquire such goods or services from such Saudi suppliers.

16. AUTHORISATIONS**16.1 Training Provider's Authorisations**

- (a) The Training Provider shall be responsible for procuring, obtaining and maintaining (at its own cost) all of the Training Provider's Authorisations.
- (b) The Procurer shall provide the Training Provider with assistance, advice and co-operation in obtaining and maintaining all of the Training Provider's Authorisations.

16.2 Procurer's Authorisations

- (a) The Procurer shall be responsible for procuring, obtaining and maintaining (at its own cost) all of the Procurer's Authorisations.
- (b) The Training Provider shall provide the Procurer with assistance, advice and co-operation in obtaining and maintaining all of the Procurer's Authorisations.

17. INSPECTIONS**17.1 Inspections by SSS**

- (a) The Training Provider acknowledges and agrees that SSS shall carry out inspections at the Colleges to assess whether the Colleges are performing in accordance with the requirements of SSS for the purposes of the SSS Institutional Review. The Procurer shall ensure that the SSS representatives shall have, at all reasonable times and upon giving reasonable notice, the right to enter any of the Colleges in order to inspect the performance of the Services.
- (b) The Procurer shall pay any fees which are due to SSS in relation to the inspections. The Procurer and the Training Provider shall provide (free of charge) all reasonable assistance to the representatives of SSS during the performance of any inspections.
- (c) If for any reason SSS is prevented from, or delayed in, carrying out inspections at the Colleges for the purposes of the Institutional Review pursuant to Clause 17.1(a), the Procurer may appoint any other person to carry out such inspection in accordance with the assessment framework developed by SSS and/or TVTC, provided that such person has the technical and regulatory competency to carry out such inspections and is approved by the Training Provider. The provisions of Clauses 17.1(a) and 17.1(b) apply to any inspections carried out pursuant to this Clause 17.1(c).

17.2 Inspections by the Procurer

- (a) The Training Provider shall ensure that the Procurer, or any agent, representative, consultant or adviser of the Procurer shall have the right to enter any of the Colleges in order to inspect the performance of the Services and to ascertain whether they are being properly executed

and to monitor compliance by the Training Provider with its obligations under this Agreement.

- (b) The Training Provider shall procure that all contracts, books, records and documents relating to the Services, including attendance records and supporting documentation relating to such attendance, are at all times open to inspection by the Procurer and its agent, representative, consultant or adviser and allow the same to be copied, as reasonably requested.
- (c) The cost of the inspection shall be borne by the Procurer. The Training Provider shall give (free of charge) all reasonable assistance to the Procurer, or any agent, representative, consultant or adviser of the Procurer, during the performance of any inspections.

17.3 Accet Accreditation

- (a) The Training Provider acknowledges and agrees that Accet shall carry out institutional inspections at the College to assess whether the College is performing in accordance with the requirements of the Accet Accreditation and the Training Provider shall ensure that Accet representatives shall have, at all reasonable times and upon giving reasonable notice, the right to enter the College in order to inspect the performance of the Services.
- (b) The Procurer shall procure that TVTC pays any fees which are due to Accet in relation to the inspections and the Procurer and the Training Provider shall provide (free of charge) all reasonable assistance to the representatives of Accet during the performance of any inspections.

18. VARIATIONS

18.1 Right to Vary by the Procurer

Variations may be initiated by the Procurer, at any time during the Term, by a written request for the Training Provider to submit a proposal.

18.2 Right to Vary by the Training Provider

- (a) The Training Provider may, at any time, submit to the Procurer a written proposal (the Training Provider's Proposal) which (in the Training Provider's opinion) will, if adopted:
 - (i) reduce the costs to the Procurer of maintaining or operating the Colleges;
 - (ii) improve the efficiency or value to the Procurer or the Colleges; or
 - (iii) otherwise be of benefit of the Procurer.
- (b) The Training Provider's Proposal shall be prepared at the cost of the Training Provider and shall include the items listed in Clause 18.3(a).
- (c) The Procurer shall either reject the Training Provider's Proposal (and may not thereafter instruct the same proposal as a Variation other than pursuant to this Clause 18.2) or shall instruct a Variation reflecting the Training Provider's Proposal and the provisions of Clause 18.3 of this Agreement shall apply.

18.3 Variation Procedure

- (a) If the Procurer instructs a Variation pursuant to Clause 18.1, the Training Provider shall respond in writing within 14 days (or such other period as may be agreed between the Parties) of the Procurer's request, either by giving reasons why it cannot comply (if this is the case) or by submitting:
 - (i) a description of the increased or reduced Services to be performed as a result of such Variation and a revised programme for execution of the Services; and
 - (ii) the Training Provider's estimate of the cost or cost savings generated by implementing the Variation (the proposal shall include a quantification and justification of all labour hours, materials, equipment and other items relevant to the adjustment, with supporting documentation, and shall be inclusive of all Costs of executing the proposed Variation).
- (b) The Procurer shall, as soon as practicable after receiving such proposal from the Training Provider under this Clause 18.3, respond in writing with either:
 - (i) an order to execute the Variation; or
 - (ii) disapproval or comments on the proposal.

The Training Provider shall not delay the performance of any Services whilst awaiting a response.

- (c) No instruction to execute a Variation pursuant to Clause 18.3(a) shall be of any force and effect unless specifically authorised in writing by the Procurer in accordance with Clause 18.3(b)(i).
- (d) On receipt of an order to execute a Variation in accordance with Clause 18.3(b)(i), the Training Provider shall proceed to promptly carry out the Variation and shall be bound by this Agreement as if such Variation was stated in this Agreement.
- (e) Upon instructing a Variation pursuant to Clause 18.3(a), the Parties shall proceed to agree the appropriate adjustment to the Base Payment for each College affected by the Variation. The Training Provider shall not be entitled to any adjustment to the Base Payment for each College affected by the Variation to the extent the relevant Variation has arisen out of or in connection with any breach, default or other omission by the Training Provider. If the Parties cannot agree the appropriate adjustment to the Base Payment for each College affected by the Variation within thirty (30) days, the rates shall be determined by an independent expert appointed in accordance with Clause 33.1. These adjustments shall take account of the Training Provider's submission pursuant to Clause 18.3(a).
- (f) Unless the relevant instruction to execute a Variation expressly so requires, in no event shall the Training Provider undertake any Variations until and unless an adjustment to the Base Payment for each College affected by the Variation (or the basis for such adjustment) has been agreed or determined in accordance with this Clause 18.3.
- (g) In any case where the Training Provider is instructed and expressly required to proceed with a Variation prior to the agreement of the adjustment to the Base Payment for each College affected by the Variation (or other basis of payment) for such Variation, the Training Provider shall keep detailed records of the Cost of executing the Variation and of time expended thereon.

19. POLITICAL FORCE MAJEURE

19.1 Definition of Political Force Majeure

- (a) In this Clause 19, **Political Force Majeure** means an exceptional event or circumstance:
- (i) which is beyond a Party's control;
 - (ii) which such Party could not reasonably foresee before entering into this Agreement;
 - (iii) which, having arisen, such Party could not reasonably have avoided or overcome;
 - (iv) which is not substantially attributable to the other Party; and
 - (v) which, in the case of Political Force Majeure affecting performance of the Training Provider's obligations, directly affects the Colleges, the Personnel or the Services.
- (b) Political Force Majeure may include exceptional events or circumstances of the kind listed below, so long as the conditions in Clause 19.1(a) are satisfied:
- (i) war, hostilities (whether war be declared or not), invasion or acts of foreign enemies, in each case occurring in Saudi Arabia;
 - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, in each case occurring in Saudi Arabia;
 - (iii) any boycott, suspension, embargo, penalty or other restriction imposed directly in Saudi Arabia by a Governmental Authority; and
 - (iv) any action or failure to act by a Governmental Authority in Saudi Arabia, including a failure that results in any Authorisations ceasing to remain in full force and effect or not being issued or renewed.
- (c) Notwithstanding the above, Political Force Majeure shall not include any of the events or circumstances listed below:
- (i) travel restrictions, advisories or warnings by countries (including Saudi Arabia) on travel to the relevant part of Saudi Arabia;
 - (ii) strike or lockout by the Personnel or other employees of the Training Provider and its subcontractors which is not a result of a general strike or lockout in Saudi Arabia;
 - (iii) acts, omissions or failures of any Personnel or subcontractor;
 - (iv) sandstorms, heavy rainfall and poor visibility due to fog or dust storms;
 - (v) shortage of subcontractors, labour or materials;
 - (vi) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by the Training Provider;
 - (vii) any failure by the Training Provider to obtain and/or maintain a Training Provider's Authorisations; or
 - (viii) risks which are expressly assumed by the Training Provider pursuant to this Agreement.

19.2 Notice of Political Force Majeure

- (a) If a Party is, or will be, prevented from performing any of its obligations under this Agreement by a Political Force Majeure event, then it shall give notice to the other Party specifying the nature of the Political Force Majeure event and the obligations whose performance are or will be prevented. The notice shall be given within fourteen (14) days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Political Force Majeure.
- (b) Notwithstanding any other provision of this Clause 19.2, Political Force Majeure shall not apply to obligations of either Party to make payments to the other Party under this Agreement.

19.3 Duty to Minimise Delay

Each Party shall at all times use reasonable endeavours to minimise any delay in the performance of this Agreement as a result of Political Force Majeure. A Party shall give notice to the other Party when it ceases to be affected by the Political Force Majeure.

19.4 Consequences of Political Force Majeure

Subject to Clauses 19.2 and 19.3:

- (a) a Party shall be relieved from performance of its obligations under this Agreement to the extent that performance of any such obligations are prevented by any event of Political Force Majeure arising after the Signing Date; and
- (b) if the Training Provider incurs (or will incur) additional Cost as a direct result of any event of Political Force Majeure, the Training Provider shall give notice to the Procurer and shall be entitled, subject to Clause 31, to payment of such Cost, which shall be included in the next invoice issued by the Training Provider in accordance with Clause 7.

20. CHANGE IN LAW

- (a) The Training Provider shall use reasonable endeavours to ensure that, following any Change in Law, the Services are performed in accordance with the terms of this Agreement.
- (b) If the Training Provider incurs (or will incur) additional Cost as a direct result of any Change in Law, the Training Provider shall give notice to the Procurer and shall be entitled, subject to Clause 31, to payment of such Cost, which shall be included in the next invoice issued by the Training Provider and payable by the Procurer in accordance with Clause 7.

21. OTHER FORCE MAJEURE**21.1 Definition of Other Force Majeure**

- (a) In this Clause 21, **Other Force Majeure** means an exceptional event or circumstance:
 - (i) which is not an event of Political Force Majeure or an event listed in Clause 19.1(c);
 - (ii) which is beyond a Party's control;
 - (iii) which such Party could not reasonably foresee before entering into this Agreement;

- (iv) which, having arisen, such Party could not reasonably have avoided or overcome;
 - (v) which is not substantially attributable to the other Party; and
 - (vi) which, in the case of Other Force Majeure affecting performance of the Training Provider's obligations, directly affects the Colleges, the Personnel or the Services.
- (b) Other Force Majeure may include exceptional events or circumstances of the kind listed below, so long as the conditions in Clause 21.1(a) are satisfied:
- (i) natural catastrophes such as earthquake, hurricane, typhoon, floods or volcanic activity; or
 - (ii) any plague or epidemic.
- (c) Notwithstanding the above, Other Force Majeure shall not include any of the events or circumstances listed below:
- (i) sandstorms, heavy rainfall and poor visibility due to fog or dust storms;
 - (ii) acts, omissions or failures of any Personnel or subcontractor;
 - (iii) shortage of subcontractors, labour or materials;
 - (iv) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by the Training Provider; or
 - (v) any failure by the Training Provider to obtain and/or maintain a Training Provider's Authorisations, unless such failure is as a result of an event of Other Force Majeure.

21.2 Notice of Other Force Majeure

- (a) If a Party is, or will be, prevented from performing any of its obligations under this Agreement by an Other Force Majeure event, then it shall give notice to the other Party specifying the nature of the Other Force Majeure event and the obligations whose performance is or will be prevented. The notice shall be given within fourteen (14) days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Other Force Majeure.
- (b) Notwithstanding any other provision of this Clause 21, Other Force Majeure shall not apply to obligations of either Party to make payments to the other Party under this Agreement.

21.3 Duty to Minimise Delay

Each Party shall at all times use reasonable endeavours to minimise any delay in the performance of this Agreement as a result of an event of Other Force Majeure. A Party shall give notice to the other Party when it ceases to be affected by the Other Force Majeure.

21.4 Consequences of Other Force Majeure

- (a) Subject to Clauses 21.2 and 21.3, a Party shall be relieved from performance of its obligations under this Agreement to the extent that performance of any such obligations is prevented by any event of Other Force Majeure arising after the Signing Date.

- (b) If the Training Provider incurs (or will incur) additional Cost as a direct result of any event of Other Force Majeure, the Training Provider shall not be entitled to payment of such Costs.

22. SUSPENSION

22.1 Suspension of Services

- (a) The Procurer may, at any time, instruct the Training Provider to suspend the performance of the Services in respect of any College.
- (b) During any period of suspension, the Training Provider shall not remove any items from the suspended Colleges without the prior written consent of the Procurer.
- (c) The Training Provider shall resume any suspended Services at any time upon receipt of the Procurer's instruction or permission to resume the suspended Services.

22.2 Consequences of Suspension

- (a) Except to the extent that the suspension was instructed as a result of negligence or breach of this Agreement by the Training Provider:
 - (i) the Training Provider shall be entitled to:
 - (A) retain any Advance Base Payment which has been paid by the Procurer pursuant to Clause 6.2 for the Trimester in respect of which the suspension has been instructed; or
 - (B) payment of that part of the Base Payment for each suspended College which is payable in respect of the Services performed as of the date of suspension,

provided that the Training Provider shall not be entitled to receive any further Base Payments in respect of the suspended Colleges during the period of the suspension; and
 - (ii) if the Training Provider incurs Costs from complying with the Procurer's suspension instructions under Clause 22.1 (including from its continued performance under Clause 22.1(a)) and/or from resuming the Services, the Training Provider shall notify the Procurer and shall be entitled, subject to Clause 31, to payment of such Costs, which shall be included in the next invoice issued by the Training Provider and payable by the Procurer in accordance with Clause 7.
- (b) Notwithstanding Clause 22.2(a), the Training Provider shall not be entitled to payment of the Cost incurred in making good the consequences of the Training Provider's failing to provide the Services in accordance with this Agreement or of the Training Provider's failure to comply with Clause 22.1.

23. TERMINATION

23.1 Termination by the Procurer for default by the Training Provider

- (a) Without prejudice to any other right or remedy under this Agreement, if the Training Provider:
 - (i) has abandoned performance of the Services or repudiated this Agreement;

- (ii) has failed to commence the Services or has suspended the Services (except to the extent permitted under this Agreement) for a period in excess of fourteen (14) days from the Effective Date or any other timeframe specified in the Scope of Services;
- (iii) fails to replace or top-up the Performance Bond in accordance with the requirements of this Agreement;
- (iv) has provided materially inaccurate or misleading information in performing its obligations under this Agreement;
- (v) fails to comply with Applicable Laws or any Authorisations; or
- (vi) is otherwise in material breach of its obligations under this Agreement,

then the Procurer may give notice to the Training Provider requiring the Training Provider to remedy the default within sixty (60) days or, if not remediable within sixty (60) days, to submit a reasonable remedial plan.

- (b) If the Training Provider fails to remedy the default or submit a remedial plan within sixty (60) days or fails to comply with any remedial plan approved by the Procurer, the Procurer may terminate this Agreement on giving written notice to the Training Provider and the date of termination shall be the date specified in such written notice.
- (c) Without prejudice to any other right or remedy under this Agreement, the Procurer may immediately terminate this Agreement on giving written notice to the Training Provider if:
 - (i) the Training Provider is bankrupt or insolvent;
 - (ii) the Training Provider assigns or transfers this Agreement or any right or interest therein without the Procurer's prior written consent;
 - (iii) the Training Provider or its Personnel, subcontractors, consultants, suppliers, representatives or agents unlawfully offer, promise, give, accept or receive any commission, advantage, gift or bribe; or
 - (iv) a Persistent Breach has occurred.

23.2 Termination by the Training Provider for default by the Procurer

Without prejudice to any other right or remedy under this Agreement, if:

- (a) the Procurer has not paid an undisputed amount which has remained due and payable under this Agreement for sixty (60) days or is otherwise in material breach of its obligations under this Agreement (including, without limitation, the provision of the Capital Expenditures under Section 4.5 above which the Training Provider has reasonably requested in order to meet its obligations hereunder); and
- (b) the Training Provider has given notice to the Procurer requiring the Procurer to remedy such event or circumstance within thirty (30) days and the Procurer has failed to remedy such default,

then the Training Provider may immediately terminate this Agreement on giving written notice to the Procurer.

23.3 Termination for prolonged Other Force Majeure, Political Force Majeure, Change in Law, failure to achieve Conditions Precedent

- (a) The Procurer may immediately terminate this Agreement on giving written notice to the Training Provider if:
 - (i) a Political Force Majeure event or Other Force Majeure event continues for a period of one hundred and eighty (180) days; or
 - (ii) in the opinion of the Procurer, the Training Provider is unable to perform the Services, in whole or part, for a period of one hundred and eighty (180) days as a result of a Change in Law.
- (b) The Procurer may immediately terminate this Agreement on giving written notice to the Training Provider if the Training Provider fails to satisfy the conditions precedent under Clause 2.2 prior to the start of the second Trimester, except to the extent such delay is caused by or attributable to any Governmental Authority in the Kingdom of Saudi Arabia, in which case the period referred to in this Clause 23.3(b) shall be extended by the period of delay caused by or attributable to that Governmental Authority.

23.4 Termination for Convenience

The Procurer shall have the right to terminate this Agreement at any time for convenience on giving six (6) months' written notice to the Training Provider.

23.5 Consequences of Termination

- (a) If this Agreement is terminated by:
 - (i) the Procurer for convenience in accordance with Clause 23.4;
 - (ii) the Procurer in accordance with Clause 23.3(a); or
 - (iii) the Training Provider in accordance with Clause 23.2,

the Procurer shall pay the Training Provider:

- (A) that part of the Base Payment for each College which is payable in respect of the Services performed as of the date of termination; and
 - (B) subject to the provision of satisfactory documentary evidence, Costs, losses and damages, including demobilisation costs, incurred by the Training Provider as a direct result of the termination provided for in Clause 23.4.
- (b) If this Agreement is terminated by the Procurer in accordance with Clauses 23.1 or 23.3(b), the Procurer shall not be obliged to pay any further instalments of the Base Payment or the Actual Base Payment for each College to the Training Provider or any Costs, losses and damages, including demobilisation costs, incurred by the Training Provider as a direct result of termination under this Clause 23.5(b).
 - (c) Subject to Clause 23.5(a), on expiry or termination of this Agreement, the Training Provider shall, at its own cost, demobilise.

24. INDEMNITIES

- (a) The Training Provider shall indemnify the Procurer and its directors, officers, employees, representatives and agents against all claims, costs, expenses, losses and liabilities suffered or incurred in respect of:
- (i) death or personal injury;
 - (ii) loss or damage to any third party property;
 - (iii) subject to Clause 25, infringement or alleged infringement of any Intellectual Property; and
 - (iv) third party actions, claims, demands, costs, charges and expenses,

arising out of or in connection with the performance of the Services or caused by the default of the Training Provider or its Personnel, subcontractors, consultants, suppliers, representatives and agents, other than to the extent such claims, costs, expenses, losses and liabilities are contributed to by the gross negligence or wilful default of the Procurer or its personnel.

- (b) The Procurer shall indemnify the Training Provider and its directors, officers, employees, representatives and agents against all claims, costs, expenses, losses and liabilities suffered or incurred in respect of:
- (i) death or personal injury;
 - (ii) loss or damage to any third party property;
 - (iii) subject to Clause 25, infringement or alleged infringement of any Intellectual Property; and
 - (iv) third party actions, claims, demands, costs, charges and expenses,

arising out of or in connection with the performance of the Procurer's obligations under this Agreement, other than to the extent such claims, costs, expenses, losses and liabilities are contributed to by the gross negligence or wilful default of the Training Provider or its Personnel, subcontractors, consultants, suppliers, representatives and agents.

25. INTELLECTUAL PROPERTY

- (a) The Training Provider assigns to the Procurer all rights, title and interests to all Intellectual Property in the Deliverables and any other documents, reports, data, databases, programs, materials, systems, methodologies, processes, information, concepts or techniques created and/or developed by or on behalf of the Training Provider (whether individually, collectively or jointly with the Procurer and/or TVTC on whatever media) in connection with the performance of its obligations under this Agreement (before the Effective Date and thereafter) (together, the **Developed IPR**). The Parties hereby acknowledge and agree that under no circumstances shall the term **Developed IPR** mean or refer to any Training Provider IPR, including any IPR which has been developed by the Training Partner (or one of its Members) for use in providing in other countries training and educational services of the type being provided within Saudi Arabia by this Agreement, all of which shall fall within the definition of Training Provider IPR. The Training Provider agrees, at its expense, to promptly execute all assignments and any other documents and do all such things that may be required by the Procurer in order to give effect to this Clause 25. However, all Training Provider IPR shall continue to be exclusively owned by the Training Provider in perpetuity and shall not be assigned to the Procurer.

- (b) The Training Provider irrevocably and unconditionally waives all moral rights in connection with the authorship of the Developed IPR wherever in the world enforceable. The Procurer grants to the Training Provider a royalty free, non-exclusive and revocable licence to use the Developed IPR for the purpose of carrying out its obligations under this Agreement. This licence shall terminate on termination of this Agreement for any reason.
- (c) The Training Provider acknowledges that the Procurer may require the right to use certain Training Provider IPR prior to the Effective Date, and/or created otherwise than pursuant to the Training Provider's obligations under the Agreement, in order to be able to fully utilise the Developed IPR and Intellectual Property which is otherwise owned by the Procurer in accordance with the terms of this Agreement. The Training Provider grants, and shall ensure that each of its subcontractors (if any) grants, a perpetual, irrevocable, freely assignable, royalty free and non-exclusive licence to the Procurer to use such Training Provider IPR for the purposes of utilising within the Kingdom of Saudi Arabia only the Developed IPR and other Intellectual Property described above, and to use all computer software, programs or information technology platforms provided by the Training Provider for the purposes of the Project, provided that such Training Provider IPR has been identified in writing and signed off by both Parties prior to any such licence being provided by the Training Provider or its subcontractors (if any) to the Procurer.
- (d) The Training Provider shall indemnify the Procurer against all loss incurred or suffered by the Procurer or for which the Procurer will become liable and which arises out of or in relation to any third party claim in respect of infringement of rights in Intellectual Property arising in connection with:
- (i) the use or possession of the Developed IPR;
 - (ii) the use of any computer software, programs or information technology platforms provided by the Training Provider;
 - (iii) the operation and maintenance of any computer software, programs or information technology platforms provided by the Training Provider;
 - (iv) the performance of the Training Provider's obligations under this Agreement; or
 - (v) any wrongful act or omission, breach of contractual obligation to any person or breach of Applicable Laws by the Training Provider.
- (e) If any claim is made or legal proceedings instituted against the Procurer to which the above indemnity applies, the Procurer shall:
- (i) notify the Training Provider of such claim as soon as reasonably practicable upon becoming aware of the same;
 - (ii) allow the Training Provider sole conduct of any claim (including the prosecution, defence or settlement of any such proceedings) at the Training Provider's own expense;
 - (iii) not admit liability or otherwise settle or compromise or attempt to settle or compromise such claim except upon the express instructions of the Training Provider; and
 - (iv) act in accordance with the Training Provider's reasonable instructions and permit copies to be taken of any materials, records or documents as the Training Provider may require in order to take action under Clause 25(e)(ii).

- (f) Where any claims or legal proceedings to which the indemnity in Clause 25(d) applies are based upon a third party assertion that an Intellectual Property right created and/or developed by the Training Provider infringes the third party's Intellectual Property or other rights and the Procurer is prevented from using such Intellectual Property right pending the outcome of the claim or legal proceeding, the Training Provider must either secure for the Procurer the right to use such Intellectual Property right pending the outcome of the claim or legal proceeding or reimburse the Procurer for any consequential or indirect losses or damages suffered by it. If any such Intellectual Property right is held to infringe the third party Intellectual Property or other rights and the use by the Procurer thereof is permanently prevented, within sixty (60) days of the relevant judgment or decision, the Training Provider shall at its expense and option:
- (i) obtain for the Procurer the right to use the third party Intellectual Property or other rights; or
 - (ii) where appropriate, replace the infringing Intellectual Property with non-infringing Intellectual Property of an equal or higher quality; or
 - (iii) modify the Intellectual Property so that it does not infringe the third party's Intellectual Property or other rights or adversely affect the Project.

26. TAXATION

The payments to be made to the Training Provider pursuant to this Agreement are inclusive of all taxes, duties, levies, charges and the like payable now or in the future in connection with this Agreement. All taxes on or calculated by reference to the Training Provider's profits or deemed profits shall be borne by the Training Provider.

27. CONSEQUENTIAL LOSSES

Except where expressly stated elsewhere in this Agreement, a Party shall not be liable to the other Party for any indirect or consequential losses arising out of or in connection with this Agreement or any loss of profit, loss of revenue, loss of contract or loss due to business interruption.

28. SUBCONTRACTING

- (a) The Training Provider may subcontract any part of the Services to be provided by it under this Agreement, provided that it obtains the prior written consent of the Procurer, such consent not to be unreasonably withheld or delayed.
- (b) If the Training Provider does subcontract any part of the Services, the Procurer shall not be relieved from any liability or obligation under this Agreement and the Training Provider shall continue to be responsible for the acts, omissions and defaults of any subcontractor as fully as if they were the acts, omissions or defaults of the Training Provider, its officers, employees or agents.

29. ASSIGNMENT

- (a) The Training Provider shall be entitled to novate this Agreement to an Affiliate incorporated under the laws of Saudi Arabia for the purposes of fulfilling the obligations of the Training Provider under this Agreement subject to the following conditions:
 - (i) such Affiliate provides an Advance Payment Bond (to the extent an Advance Base Payment has been paid to the Training Provider for the Trimester during which the novation takes place) and Performance Bond in accordance with the requirement of Clauses 8 and 9;

- (ii) the Parent Company Guarantee remains in full force and effect following such novation (to the extent required pursuant to Clause 9.1(a)(i));
 - (iii) all necessary amendments are made to this Agreement to take account of such novation;
 - (iv) the Training Provider demonstrates, to the satisfaction of the Procurer, that such Affiliate has the technical and financial capabilities to perform its obligations under this Agreement and executes all documents necessary to perfect any such novation; and
 - (v) to the extent that the Training Provider constitutes a consortium of two or more persons, the JV Leader directly owns a majority of the voting rights in such Affiliate.
- (b) Subject to Clause 29(a), the Training Provider shall not be entitled to assign, transfer, novate and/or charge any of its rights or obligations under this Agreement without the prior written approval of the Procurer; such approval may be withheld by the Procurer acting at its sole discretion.
 - (c) The Procurer may, at any time assign, transfer, novate and/or charge the benefit of this Agreement and/or any of the Procurer's present or future rights, interests and/or benefits under this Agreement to any other person, provided that necessary amendments are made to take account of the assignment, transfer, novation or change. The Training Provider shall, upon the request of the Procurer, execute any documents necessary to perfect any assignment, transfer, novation or charge made in accordance with this Clause 29(c).
 - (d) The Training Provider, or each Member of the Training Provider to the extent applicable, may not undergo a Change in Control without the prior written consent of the Procurer, which consent may not be unreasonably withheld or delayed. Any breach of this Clause 29(d) shall constitute a material breach of this Agreement by the Training Provider for the purposes of Clause 23.1.
 - (e) Upon novation of this Agreement to an Affiliate pursuant to Clause 29(a), the Training Provider shall procure that for the duration of the Term there shall be no change in the ownership of the shares of the Training Provider without the prior written consent of the Procurer, which consent may not be unreasonably withheld or delayed. Any breach of this Clause 29(e) shall constitute a material breach of this Agreement by the Training Provider for the purposes of Clause 23.1. Notwithstanding anything to the contrary which is contained in this Agreement, the Procurer acknowledges and agrees that it is the intention of the Training Provider to have this Agreement novated to a limited liability company established and owned by Rancho and Al Khaleej under the laws of the Kingdom of Saudi Arabia, and the Procurer shall consent to such novation, subject to the performance of the requirements of the applicable provisions of Clause 9 and this Clause 29 with respect to such novation.

30. CONFIDENTIALITY

30.1 Confidential Information

Subject to Clause 30.2, a Party shall keep confidential all information relating to the Services and this Agreement and all information received from the other Party which is designated as confidential or the receiving Party ought reasonably expect the disclosing Party would consider to be confidential (**Confidential Information**), and will not make any disclosure, and shall use reasonable endeavours to ensure that its directors, officers, employees, subcontractors and agents do not make any disclosure, to any person of any Confidential Information.

30.2 Exceptions

The confidentiality obligations under Clause 30.1 shall not apply to the following:

- (a) information that a disclosing Party can demonstrate, to the reasonable satisfaction of the other Party, to be generally available in the public domain at the time of disclosure other than as a result of a breach of Clause 30.1 by a Party; or
- (b) any disclosure which may reasonably be required:
 - (i) for the performance by the disclosing Party of its obligations under this Agreement including to any professional advisers of the disclosing Party;
 - (ii) to ensure the disclosing Party complies with its statutory obligations; or
 - (iii) for the purposes of legal proceedings.

30.3 Further Undertaking

A Party further undertakes:

- (a) to use the Confidential Information solely for the purpose of fulfilling its obligations under this Agreement;
- (b) to limit access to Confidential Information to those directors, officers, employees, subcontractors and agents who reasonably require the same in order to ensure the satisfactory performance of its obligations under this Agreement;
- (c) to inform each of the directors, officers, employees, subcontractors and agents to whom Confidential Information is disclosed of the restrictions as to the use and disclosure of Confidential Information under Clause 30.1 and to use all reasonable endeavours to ensure that all such persons observe such restrictions; and
- (d) upon receipt of a written request from the other Party and in any event upon completion of the Services or earlier termination of this Agreement, to return to the other Party all documents, papers, computer programs, software or records containing Confidential Information of such other Party.

31. PROCESS FOR TRAINING PROVIDER'S CLAIMS**31.1 Notice of Training Provider's Claims**

If the Training Provider considers itself to be entitled to any payment of any Cost under this Agreement, the Training Provider shall give notice to the Procurer, describing the event or circumstance giving rise to the claim. The Training Provider shall give such notice as soon as practicable and, in any event, not later than twenty-eight (28) days after the Training Provider became aware, or should have become aware, of the event or circumstance.

31.2 Consequences of failure to notify

If the Training Provider fails to:

- (a) give notice of a claim within such period of twenty-eight (28) days; and/or
- (b) comply with the requirements set out in Clause 31.3,

then the Training Provider shall not be entitled to additional payment, and the Procurer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Clause 31 shall apply.

31.3 Submission of supporting evidence

The Training Provider shall submit any other notices which are required by this Agreement, together with such supporting particulars for the claim as may be reasonably requested by the Procurer to substantiate the claim, all as relevant to such event or circumstance.

31.4 Claim process

- (a) Within thirty (30) days of the Training Provider becoming aware of the event or circumstance giving rise to the claim or such other period as may be agreed between the Parties, the Training Provider shall send to the Procurer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
 - (i) this fully detailed claim shall be considered as interim;
 - (ii) the Training Provider shall send further interim claims at monthly intervals, giving the accumulated amount claimed, and such further particulars as the Procurer may reasonably require; and
 - (iii) the Training Provider shall send a final claim within thirty (30) days after the end of the effects resulting from the event or circumstance or such other period as may be agreed between the Parties.
- (b) Within thirty (30) days after receiving a claim or any further particulars supporting a previous claim or such other period as may be agreed between the Parties, the Procurer shall respond with approval, or with disapproval and detailed comments. The Procurer may also request any necessary further particulars, but shall nevertheless give its response on the principles of the claim within such time.
- (c) Each interim payment shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of this Agreement.
- (d) Until the particulars supplied are sufficient to substantiate the whole of the claim, the Training Provider shall only be entitled to payment for such part of the claim as it has been able to substantiate.
- (e) The Procurer shall determine the additional payment (if any) to which the Training Provider is entitled under this Agreement. If the Training Provider disagrees with a determination of the Procurer as to the additional payment (if any) to which the Training Provider is entitled under this Agreement, such dispute shall be determined in accordance with Clause 33.1.
- (f) The requirements of this Clause 31 are in addition to those of any other Clause which may apply to a claim. If the Training Provider fails to comply with this or another Clause in relation to any claim, any additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under Clause 31.2.

31.5 Exclusion of liabilities

For the avoidance of doubt and notwithstanding anything else in this Agreement to the contrary or otherwise in Applicable Laws, the Training Provider shall have no entitlement under this Agreement to additional payment of any Costs except where it has complied with its obligations under this Clause 31.

32. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of Saudi Arabia.

33. DISPUTE RESOLUTION**33.1 Expert Determination**

- (a) Where this Agreement refers to the appointment of an expert, the Parties shall agree in writing upon the identity of a qualified expert of international reputation and standing or, if the Parties are unable to agree on the identity of the expert within thirty (30) Business Days or if the person appointed is unable or unwilling to act, an appropriate approved expert shall be appointed by a representative of the relevant institutional body, for example the Chairman of the Institute of Chartered Accountants of England and Wales or the Chairman of the Institution of Civil Engineers.
- (b) The Parties shall co-operate in good faith to do everything necessary to procure the effective appointment of the expert. The Parties shall agree terms of engagement with the expert as soon as reasonably practicable after the expert is nominated and shall not withhold or delay their consent to such terms if they are reasonable and consistent with the provisions of this Agreement. The Parties shall counter-sign the terms of appointment as soon as they are agreed. All costs incurred in relation to the appointment of the expert will be for the account of the Party who loses the dispute.
- (c) The Parties acknowledge and agree that the decision of an expert appointed in accordance with this Clause 33.1 shall be final and binding on the Parties.

33.2 Amicable Resolution

In the event that the Senior Management Team and the College Board for each College are unable to resolve any dispute arising out of or in connection with this Agreement (each, a **Dispute**), the Parties shall attempt in good faith to resolve any Dispute promptly through negotiations between the respective senior executives of the Parties and TVTC who have authority to settle such Dispute within thirty (30) days of such Dispute arising.

33.3 Board of Grievances

Any Dispute arising out of, or in connection with, this Agreement (including any question regarding its existence, validity or termination) which is not resolved in accordance with Clause 33.2, shall be finally settled by:

- (a) the Board of Grievances in Saudi Arabia; or
- (b) where the Board of Grievances in Saudi Arabia (or such other body in Saudi Arabia as may replace it from time to time) does not accept jurisdiction, another Saudi Arabian court with jurisdiction.

34. MISCELLANEOUS**34.1 Entire Agreement and Amendment**

- (a) This Agreement constitutes the entire agreement between the Parties concerning the subject matter of this Agreement and supersedes and replaces any previous agreement between the Parties or any representation made by one Party to the other (whether oral or written) concerning the subject matter of this Agreement.
- (b) To the extent permitted by Applicable Laws, the Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein, provided that nothing in this Clause 34.1 shall limit a Party's liability for fraud.
- (c) No changes, amendments, waivers or modifications of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by both Parties.

34.2 Representations, Warranties and Undertakings

Each Party represents, warrants and undertakes to the other Party that:

- (a) it has the requisite power and authority to enter into and perform its obligations under this Agreement;
- (b) this Agreement has been duly authorised and executed by it, and this Agreement constitutes legal, valid and binding obligations on it enforceable in accordance with their terms;
- (c) neither the execution nor the delivery of this Agreement, nor the exercise of any rights or performance of any obligations under this Agreement by it will result in or constitute:
 - (i) a breach of any agreement, deed or instrument to which it is a party;
 - (ii) a breach of any provision of its constitutional documents; or
 - (iii) a violation of any lien, lease, law, order, judgment, award, injunction, decree, ordinance or regulation or any other restriction of any kind or character by which it is bound; and
- (d) no further consent, approval or authorisation of any Governmental Authority or other person is required by it for the entry into and the performance of its obligations under this Agreement.

34.3 Partnership

Nothing contained in this Agreement shall create an association, joint venture or partnership between the Parties or impose any partnership liability on any Party. Neither Party shall have any right, power or authority to enter into any agreement or commitment or act on behalf of or otherwise bind the other Party without that other Party's prior written consent, except where expressly provided herein.

34.4 Effect of Invalid Provisions

If any term, condition or provision of this Agreement is held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability

of the remaining parts of this Agreement. The Procurer and the Training Provider hereby agree to attempt to substitute, for any invalid or unenforceable term, condition or provision, a valid or enforceable term, condition or provision, which achieves to the greatest possible extent, the economic, legal and commercial objectives of the invalid or unenforceable provision.

34.5 Waiver

No term, condition, right, obligation, non-compliance or breach of this Agreement shall be waived or be deemed to have been waived unless such waiver is in writing and addressed to the other Party. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms or conditions of this Agreement unless expressly stipulated in such waiver. Waiver of one term, condition, right, obligation, non-compliance or breach shall not constitute waiver of any subsequent or other term, condition, right, obligation, non-compliance or breach, unless otherwise specifically stated in writing and addressed to the other Party.

34.6 Execution in Counterparts

This Agreement may be executed in any number of counterparts and by the different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be as effective as delivery of a manually executed counterpart of this Agreement.

34.7 Survival

The provisions of the following Clauses 5, 7, 8, 9, 10, 24, 25, 27, 30, 32, 33, 34 and 35 and Schedule 7 shall survive the termination of or expiry of this Agreement. This Clause 34.7 is without prejudice to any accrued rights and obligations of the Parties as of the date of any termination of this Agreement.

35. NOTICES, ADDRESSES AND LANGUAGE

35.1 Notice and Addresses

Except where otherwise expressly provided for in this Agreement, every certificate, notice, instruction, direction, order, consent or decision to be given under this Agreement shall be given in writing to the address and/or addressee specified below, in respect of each Party (or to such other address and/or addressee as a Party may specify in writing) and shall be effective when received and shall be deemed to be received if:

- (a) delivered personally, upon delivery;
- (b) sent by post, upon certified receipt;
- (c) sent by a courier service, upon receipt;
- (d) sent by facsimile transfer, when dispatched but only if sender's transmission report shows the entire facsimile to have been received by the recipient; or
- (e) sent by electronic mail or facsimile on the first working day at the recipient address following the date of sending.

If to the Procurer:

COLLEGES OF EXCELLENCE COMPANY

Dr. Ali N. Alghafis
Chairman of COE Board of Directors
P.O. Box: 2646 Riyadh 13241
A4, 9th Floor, Granada Business Park,
Riyadh, Kingdom of Saudi Arabia
Tel: +966-11-5118585

If to the Training Provider:

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT FOUNDATION

Raul Rodriguez
2323 North Broadway, Santa Ana, California, US 92706
Tel: 001 714 480 7450
Email: Rodriguez_Raul@rsccd.edu

Enrique Perez, J.D.
2323 North Broadway, Santa Ana, California, US 92706
Tel: 001 714 480 7460
Email: Perez_Enrique@rsccd.edu

35.2 English Language

The Training Provider shall prepare all documents, and the Parties shall conduct all communications in connection with the Services, in English. Any documentation received by the Procurer in any other language will not be accepted and must be resubmitted in English unless required by Applicable Laws in which case it must be accompanied by an approved legal English translation procured by the Training Provider at its cost.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

SCHEDULE I
COLLEGES

Name of College	City	Region	GPS co-ordinates (latitude)	GPS co-ordinates (longitude)
Al-Baha College of Technology	Al-Baha	Al-Baha Province	20.10	41.59
Khamis Mushait College of Technology	Khamis Mushait	Asir Province	18.38	42.71

SCHEDULE 2

SCOPE OF SERVICES

1. COLLEGE ASSESSMENT AND IMPROVEMENT

1.1 College Assessment:

The Training Provider shall prepare a detailed College Assessment in respect of each College, setting out a baseline assessment of current College performance. The College Assessment will be based on the following elements:

(a) Assessment of trainer coaching needs

The Training Provider shall assess each member of the College training staff on content knowledge, teaching ability, technical knowledge, "will" (dedication to the job), and any other dimensions deemed relevant by the Training Provider.

To establish an understanding of the baseline quality of the College training staff, the Training Provider shall:

- (i) observe the College training staff in normal classroom / workshop settings;
- (ii) interview the College training staff regarding their own performance; and
- (iii) interview students about their College training staff.

This assessment of the College training staff's strengths and coaching needs will serve as the basis for a personalised coaching program to be developed for each trainer and to be delivered by the Personnel.

(b) Assessment of leader and administrator coaching needs

The Training Provider shall:

- (i) assess College leadership and administrative staff on the dimensions of: competency, efficiency and work ethic, "will" (dedication to the job), and content knowledge (overall school management for the College Dean, relevant school service for administrative staff); and
- (ii) identify whether the College leadership staff are adequately fulfilling the responsibilities of their positions and whether any changes need to be made to their daily routine.

To better evaluate the competence of College leadership and administrative staff, the Training Provider shall identify the expected or best-practice roles and responsibilities of all College leadership and administrative staff positions and compare its analysis to the actual roles and responsibilities being filled by the current occupants of each position.

Personnel shall shadow College leadership and administrative staff in the course of their day-to-day activities to evaluate their adherence to best-practice behaviours for their positions. This assessment of the College leadership and administrative staff's' strengths and coaching needs will serve as the basis for a personalised coaching program to be developed for each College leader and administrative staff member, to be delivered by the Personnel.

(c) Assessment of readiness for change

The Training Provider shall:

- (i) assess the enthusiasm of College leadership administrative and training staff for their own professional development and overall College improvement through interviews with College leadership and training staff and on-the-ground observations; and
- (ii) make a reasonable effort to gain the buy-in of College leadership administrative and training staff for professional development initiatives and continue to manage the change throughout the duration of the capability-building initiative.

(d) Assessment of student attitudes

The Training Provider shall interview select students (either individually or in groups) with the aim of understanding student perspectives on College training staff quality and other elements of College performance.

The Training Provider may also run school-wide surveys to gain a quantitative understanding of student attitudes and perceptions.

(e) Assessment of college budget and budgetary requirements

The Training Provider shall:

- (i) analyse the College's budget to identify opportunities for cost savings or efficiencies (e.g., strategic sourcing), as well as any additional spending needs (e.g., training, equipment) to facilitate College improvement initiatives; and
- (ii) develop a plan to implement a sustainable budget-planning process.

(f) Assessment of current programs and curricula

The Training Provider shall:

- (i) examine the College's programs, courses, and curricula and compare these to best-practice examples as well as the NOSS produced by SSS to identify potential improvements; and
- (ii) identify any new programs or courses they would like to introduce as well as any programs or courses currently offered that they believe should be discontinued. As the Training Provider implements new curricula, courses, and programs, it shall ensure that these programs:
 - (A) continue to be taught in Arabic¹; and
 - (B) are aligned with the most recent NOSS.

(g) Assessment of training supplies and equipment

The Training Provider shall:

¹ In exceptional cases, some curricula may be taught in English. This decision would be reached in collaboration with the College, TVTC, and the Procurer.

- (i) verify the inventory of supplies and equipment at each College and ensure all equipment is in proper working order and is being used appropriately for training purposes (e.g., to ensure equipment could not be better used for training purposes at another college); and
 - (ii) identify any equipment that needs to be repaired and any new supplies or equipment needed as part of the College improvement initiatives.
- (h) Assessment of college facilities**

The Training Provider shall:

- (i) assess the quality of College facilities (classrooms, workshops, offices, public areas, toilets, grounds, etc.) to ensure that they are in appropriate working condition and are well-maintained;
- (ii) identify any facilities in urgent need of repair or renovation and budget the expense of making the necessary renovations; and
- (iii) assess the quality of current maintenance and cleaning services and identify the need for improved maintenance and cleaning services if required.

(i) Assessment of performance management process

The Training Provider shall assess the current performance management process to establish a baseline for the development of a transparent and systematic review system.

(j) Assessment of procurement process

The Training Provider shall:

- (i) assess the effectiveness and efficiency of the current procurement process (e.g., for classroom equipment and materials);
- (ii) ensure that the procurement process seeks cost-effective solutions without compromising on service and/or product quality; and
- (iii) review the background of current service provider relationships to identify contracts that may need to be retendered as part of the college improvement initiative.

(k) Assessment of IT systems

The Training Provider shall:

- (i) review the current status of the College's IT infrastructure including connectivity (e.g., wireless hotspots, speed), network security, computer labs and software; and
- (ii) identify any platforms and/or equipment that are in need of repair or replacement and any new equipment required as part of the College improvement initiative.

1.2 College Improvement Plan:

Based on the College Assessment, the Training Provider shall create a detailed College Improvement Plan for each College. The College Improvement Plan should address each of the factors listed in section 1.1 separately and should contain clear targets, actions, terms, points of responsibility and due dates. The College Improvement Plan should also include overall performance improvement

initiatives and should serve as a guide for the capability-building process over the Term of the Agreement, with a focus on the Initial Term. The College Improvement Plan will be developed in conjunction with the College Dean and will be verified and approved by the Procurer and TVTC. The College Improvement Plan will be used as a basis for the performance management of the Training Provider.

2. LEADER, TRAINER AND ADMINISTRATIVE STAFF COACHING

2.1 College Dean Coaching:

Personnel shall:

- (a) observe each College Dean on a daily basis by attending meetings and other functions with them;
- (b) train each College Dean on leadership and management skills, people management, task management, work-planning, and work ethics;
- (c) ensure that each College Dean is fulfilling his/her expected roles and responsibilities for his/her position and shall identify any expectation that is not being met;
- (d) identify the relevant training programs for each College Dean based on their skill level and training requirements;
- (e) assess leader progress against key performance indicators on a Trimester basis and share findings with each College Dean and the Procurer; and
- (f) identify College leadership staff who are not progressing or not showing willingness to change so that such individuals can be referred to the Procurer.

The Training Provider shall also appoint a "Training Provider Head" in respect of each College who will share day-to-day operational responsibility and management authority with the College Deans.

Each Training Provider Head shall:

- (i) have his/her own line position in the college organisation and will be involved in all Senior Management Team decisions;
- (ii) be specifically responsible for procurement, Personnel, and curricular decisions;
- (iii) personally coach the College Dean on problem-solving strategies and frameworks, leadership qualities, public speaking skills, and task management; and
- (iv) be the primary assessor of the College Dean, and will regularly report progress to the Procurer.

2.2 College Training Staff Coaching

The Personnel shall:

- (a) observe the College training staff in their classrooms and workshops and train the College training staff on topics including: technical content knowledge, teaching technique, presentation skills, lesson planning, and innovative methods for engaging students;

- (b) work with only a limited number of teachers at a time and dedicate multiple hours of one-on-one coaching time weekly to each College training staff member;
- (c) recommend specific training programs for each College training staff member based on their skill level and training requirements;
- (d) assess College training staff members progress against key indicators on a Trimester basis and share findings with the Procurer; and
- (e) identify College training staff who are not progressing or not showing willingness to change so that these trainers can be referred to the Procurer.

The Training Provider shall maintain the desired ratio of 1 Personnel member for every 10 College training staff members throughout the Term of the Agreement.

2.3 Coaching of College Leadership and Administrative Staff:

The Training Provider shall bring in Personnel to improve the capabilities of College leadership and administrative staff. The Personnel shall:

- (a) assess administrative staff content knowledge, work ethics, and effectiveness in fulfilling the responsibilities of their position;
- (b) train the administrative staff on subject knowledge for services they provide, technical skills, time management, and any other relevant areas indicated by the coach;
- (c) assess the progress of the administrative staff against key performance indicators on a Trimester basis; and share findings with the College Dean and the Procurer; and
- (d) identify administrative staff members who are not progressing or not showing willingness to change.

Where necessary services are lacking or very weak, the Training Provider shall deliver those services in the short term while preparing College administrative staff to deliver these services in the future.

The Training Provider shall maintain the desired ratio of 1 Personnel member for every 10 College administration staff members throughout the Term of the Agreement and 1 Personnel member for every 5 College Leadership staff.

3. OVERALL COLLEGE PERFORMANCE IMPROVEMENT

3.1 Regular Assessment of College Performance:

The Training Provider shall develop and institute a process by which College administrative and leadership staff meet regularly to assess College performance. This process should include the KPIs to measure and analyze on a Trimester basis the meeting schedule, composition of the performance assessment group, and a framework for evaluating College performance and responding to performance trends.

3.2 Performance Management of Leader, Trainers and Administrative Staff:

The Training Provider shall institute a process to regularly assess College training staff on their performance and quality improvement, in accordance with Saudi Civil Service Law. Performance management shall:

- (a) include both qualitative and quantitative assessments of College training staff performance;
- (b) be used to identify performance bonus allocations, potential interventions, and potential career progression opportunities; and
- (c) be established as a sustainable process that can be conducted by a College employee without the help of Personnel.

The Training Provider shall:

- (d) institute a system of performance management that incorporates student surveys and an observation/assessment conducted by the College training staff member's peers and seniors based on an objective framework to be developed by the Training Provider;
- (e) prepare the student survey and peer assessment framework to be used on an ongoing basis; and
- (f) develop a performance-based incentive system with an objective method for calculating a trainer's performance rating and bonus based on transparent KPIs.

The Training Provider shall institute a process to regularly assess College leadership staff and College administrative staff on their performance and the improvement in their delivery of quality work. The Training Provider shall ensure that this performance management:

- (A) includes qualitative and quantitative assessments of the performance of College leadership staff and College administrative staff;
- (B) is capable of being used to identify performance bonus allocations, potential interventions, and potential career progression opportunities; and
- (C) is a sustainable performance management process that can be conducted by a College employee without the help of Personnel.

The Training Provider shall institute a system whereby College leadership staff is regularly assessed by one or more peers based on an objective framework. The Training Provider shall develop a performance-based incentive system with an objective method of calculating a leader's performance rating and bonus based on transparent KPIs.

3.3 Improvement of Training Programs:

(a) Refinement of foundation program

The Training Provider shall coach College training staff for the foundation program alongside all other College training staff, but the Training Provider shall also be expected to evaluate and improve the core design of the foundation program. The Training Provider shall:

- (i) observe and assess the course quality, improve the course curriculum and daily lesson plans, and train the course trainers to better deliver the program; and
- (ii) explore the possibility of expanding the foundation program to two Trimesters for students requiring additional support.

(b) Introduction of new programs and courses

The Training Provider shall:

- (i) assess college program and course offerings and, if necessary, identify new programs to be introduced at the College (based on local employment needs and relevant NOSS);
 - (ii) develop detailed course plans and curricula for the introduction of the program; and
 - (iii) discontinue programs and/or courses as deemed necessary.
- (c) **Curriculum redevelopment and refinement**

The Training Provider shall: review the College's curricula and adjust it if necessary to better adhere to NOSS and meet international best practices. The Training Provider may change training plans, course syllabi, lesson timelines, learning materials, or any other element of the curricula increase effectiveness.

- (d) **Blended learning**

Blended Learning is an approach to developing and delivering curricula that seeks to increase education quality by leveraging new education technologies (e.g., e-learning modules) (**Blended Learning**). The Training Provider shall integrate Blended Learning into the curriculum over the management contract period.

Given the lead-time required to develop the relevant IT infrastructure, the Training Provider is not expected to begin integrating Blended Learning in the first Academic Year; however, the Training Provider is encouraged to identify key enablers needed (e.g., IT equipment) in their College Improvement Plan in-line with the Blended Learning initiative.

- (e) **Female initiatives**

The Training Provider shall develop curricula and delivery mechanisms relevant for overcoming challenges specific to females (e.g., e-learning modules for home-based vocations). Given that incorporating a female initiative component will likely impact curricula, incorporating these changes is not expected during the first Academic Year.

- (f) **Entrepreneurship**

The Training Provider shall develop programs (which may or may not leverage these current programs and modules) to encourage entrepreneurship among students and to give them the core skills required to succeed as entrepreneurs. Entrepreneurship programs can be combined with other initiatives, such as Blended Learning. Providers are not expected to include this initiative during the first Academic Year.

3.4 **Improvement and Expansion of College Services and Processes:**

The Training Provider shall assess services that are currently provided to the College by TVTC and shall help the College develop the capability to perform them autonomously.

- (a) **Procurement**

The Training Provider shall procure new contractors to carry out any Ancillary Services which are, in the opinion of the Training Provider, not being delivered properly under existing arrangements. The Training Provider shall develop a sustainable procurement process and train College administrative staff on best practices for procuring and managing contractors.

The Training Provider shall identify new equipment and learning materials in need of procurement and institute a process for regularly updating equipment in a cost-efficient manner. In the short term, the Training Provider will be expected to obtain TVTC approval for significant capital outlays.

The Training Provider shall develop a sustainable procurement process and train College administrative staff on best practices for procuring and managing contractors. The Procurer and TVTC will disclose to the Training Provider all related service contracts during the college turnaround plans phase.

(b) Employer engagement

The Training Provider shall assess the College employer engagement function and develop an employer engagement office if one does not already exist. This function should include a formal outreach process to local employers with the goal of providing information on the College, building relationships, creating official on-the-job training programs, and encouraging local employers to hire graduates from the College. The employer engagement office should also help organize trainee site visits to local employers to allow trainees to develop relationships and observe potential careers first-hand.

(c) Career guidance and non-academic services

The Training Provider shall develop career guidance for College students that involves having counselors who offer personalized advice to College students on their education and career paths. Career guidance counselors should help College students select their majors, find work placements, and eventually find full-time employment after graduation. Career guidance should also include teaching trainees "soft skills," including interview preparation, resume writing, work habits, and personal finance, to help them find and retain jobs.

The Training Provider may develop other services for the benefit of College students such as extra-curricular activities, recreational and educational trips, and onsite health clinics.

(d) Budgeting process

The Training Provider shall design and implement a best-practice budgeting process to analyze the College budget and identify wasteful expenses, project budgetary requirements, and prepare budgets for future years. The process shall include a budgeting plan to guide the budgeting process each Academic Year with key actions, deadlines, and points of responsibility.

The Training Provider shall identify College Personnel responsible for budgeting and train these College personnel on the budgeting process in order to prepare them to manage the process independently in the future.

(e) IT services

The Training Provider shall:

- (i) develop the College's ability to integrate IT based platforms in to the learning environment in addition to basic IT service capabilities such as maintenance, equipment renewal and security; and
- (ii) identify College Personnel responsible for managing college IT infrastructure and to train them to fulfill their duties in supporting desired learning outcomes through technology.

(f) Student Services

The Training Provider shall develop a College student services platform (e.g. admissions, registration, co-op training, career fairs) to improve the overall student experience from pre-admission interest to post-graduate employment. The Training Provider shall identify Personnel

responsible for managing student services and train them appropriately in order to transfer best-in-class career services capabilities to the College.

SCHEDULE 3**PROCURER'S OBLIGATIONS**

The Procurer shall, amongst other things:

- (a) pay all sums due to the Training Provider under and in accordance with this Agreement;
- (b) promote technical and vocational education across Saudi Arabia to make it an attractive option to students;
- (c) at the request of the Training Provider, provide reasonable administrative support to assist the Training Provider in the operation of the Colleges which will typically include the following:
 - (i) Pre-opening
 - (A) support for visa issuance for Personnel and families and arranging for the shipment of belongings, when required;
 - (B) support for corporate bank account opening, including issuing non-objection letters;
 - (C) support in relation to completing the licensing process for the establishment of the Training Provider as a Joint Venture comprised of the two Members indicated herein as a corporation in the Kingdom of Saudi Arabia, including but not limited to issuing letters of support to SAGIA, the Ministry of Labour and other government departments as appropriate; and
 - (D) providing in-person visits and handover of colleges and housing units;
 - (ii) On-going support
 - (A) support with payment processing and funding issues;
 - (B) providing a list of potential contractors for Ancillary Services;
 - (C) facilitating contacts and networks with local employers;
 - (D) assisting with student affairs (e.g. punctuality, misconduct, disputes and public relations issues); and
 - (E) processing student stipends.
- (d) provide guidance to the Training Provider.

SCHEDULE 4

FEE

1. BASE PAYMENT

The base payment for each College is the average annual operating cost for that College (the Base Payment). The Base Payment for each College is as set out below:

College	Academic Year 1		Academic Year 2	Academic Year 3
	19 May 2015 – 30 June 2015	18 August 2015 to 16 June 2016	Academic Year	Academic Year
Al-Baha College of Technology	SAR 2,946,000	SAR 13,830,000	SAR 14,252,000	SAR 14,174,000
Khamis Mushait College of Technology	SAR 2,776,000	SAR 13,868,000	SAR 14,287,000	SAR 14,196,000

The Base Payment will be fixed for the Initial Term (subject to inflation in accordance with the US Consumer Price Index starting from the second academic year) and will be payable to the Training Provider in equal instalments in respect of each Trimester.

The Procurer shall reduce the Base Payment for each College on a proportionate basis for each member of the Personnel Quota who fails to achieve the Training Quota.

The above mentioned amounts of base payment include the tax component applicable to Rancho Santiago Community College District Foundation. However, the actual tax component will be reimbursed upon production of receipts issued by the concerned department / ministry of the Kingdom of Saudi Arabia with a cap of SR 1.5 million per year.

2. PERFORMANCE PAYMENT

The performance payment for each College is as set out below (the Performance Payment):

College	Performance Payment - Academic Year 1	Performance Payment - Academic Year 2	Performance Payment - Academic Year 3
Al-Baha College of Technology	SAR 2,075,000	SAR 2,138,000	SAR 2,126,000
Khamis Mushait College of Technology	SAR 2,080,000	SAR 2,143,000	SAR 2,129,000

The Performance Payment will be fixed for the Initial Term (subject to inflation in accordance with the US Consumer Price Index starting from the second academic year). The Performance Payment will be paid to the Training Provider based on Milestone and KPI achievements as follows:

(a) Percentage Index per Academic Year

	Academic Year 1 Percentage Index	Academic Year 2 Percentage Index	Academic Year 3 Percentage Index
Base Payment	100%	100%	100%
Milestone Payment	100%	75%	50%
KPI Payment	0%	25%	50%

(b) Milestone Payments

Academic Year 1			
Milestone	Submission Deadline	Deliverables Value (as percentage of total Milestone Payment)	Delay Impact for each business day of delay (as percentage of Deliverables Value)
College Assessment and Improvement Plan	15 May 2015	20%	5%
Annual Budget	31 July 2015	10%	5%
Personalised Training Programs	31 December 2015	10%	5%
Curricula Improvement Plan	31 December 2015	10%	5%
Trimester Reports	Last day of each Trimester	30%	5%
Annual Report	Last day of each Academic Year	20%	5%

Academic Years 2 and 3			
Milestone	Submission Deadline	Deliverables Value (as percentage of total Milestone Payment)	Delay Impact for each business day of delay (as percentage of Deliverables Value)
Trimester Reports	Last day of each Trimester	60%	5%
Annual Report	Last day of each Academic Year	40%	5%

The Milestone Payment will be multiplied by the Percentage Index for the relevant Academic Year set out above.

(c) KPI Payments

KPI	Starting Level (0% KPI Payment)	Impact	Maximum Impact
SSS Institutional Review Grade	Starting Level, to be notified by the Procurer to the Training Provider by no later than 31 October 2015	The full 30% will be awarded if: (i) the College's SSS Institutional Review Grade increases a level from the Starting Level; or (ii) the College maintains its SSS Institutional Review Grade at the top level ("4").	30%
SSS Qualifications	Starting Level, to be notified by the Procurer to the Training Provider by no later than 31 October 2015	The full 30% will be awarded if: (i) the College increases the number of teachers with SSS Qualifications or Equivalent Qualifications by 20% or more above the Starting Level; or (ii) the College maintains the percentage of teachers with SSS Qualifications or Equivalent Qualifications above 90%.	30%
One-Year Employment Rate	Starting Level, to be notified by the Procurer to the Training Provider by no later than 31 October 2015	4% for every 1% above the Starting Level. The full 40% will be awarded if the College maintains a One-Year Employment Rate above 95%.	40%

If in any Academic Year the Training Provider achieves a higher performance level than the minimum performance level, the minimum performance level for the following Academic Year will be increased to the actual performance level achieved by the Training Provider in the preceding Academic Year.

The KPI Payment will be multiplied by the Percentage Index for the relevant Academic Year set out above.

SCHEDULE 5

FORM OF ADVANCE PAYMENT BOND

00/00/0000

COLLEGES OF EXCELLENCE COMPANY

Granada Oasis Business Park
Building A4, 9th Floor,
PO Box 2646, Riyadh 13241-7180.

Since you have awarded our clients Messrs(the **Contractor**) a contract for the provision of capability building services at certain colleges in Saudi Arabia dated [●] (the **Contracts**). We, [●], (the **Guarantor**) hereby irrevocably and unconditionally guarantee the payment to you of SAR. -----.00 (SAUDI RIYALS ----- **ONLY**) being (-%) of the value of the operation and maintenance contract and accordingly covenant and agree as follows:

- (a) The Guarantor shall forthwith on demand made by you in writing and notwithstanding any objection by the Contractor pay you such amount of amounts as you shall require not exceeding in aggregate the above mentioned amount of . -----.00 (-----Only) by transfer to an account in you name at such bank in Saudi Arabia as you shall stipulate or in such other manner as shall be acceptable to you.
- (b) Any payment made hereunder shall be made free and clear of, and without deduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or with holdings of any nature whatsoever and by whomsoever imposed.
- (c) The covenants herein contained constitute unconditional and irrevocable direct primary obligations of the Guarantor. No alteration in the terms of the Contract and no modification or extension of the Contract or in the extent or nature of the work to be performed hereunder and no indulgence, allowance of time by you or other forbearance or concession or any other act or omission by you which but for this provision might exonerate or discharge the Guarantor shall in any way release the Guarantor from any liability hereunder.
- (d) This guarantee shall remain valid and in full force and effect up to the end of the --- day of the month of --- of the year ---- provided that it is a condition of this guarantee that, in the event you give the Guarantor on or prior to the said expiry date of this guarantee (or any subsequent extension of that expiry date in accordance with this proviso) signed written notification requesting an extension, the Guarantor will:
 - (i) automatically extend this guarantee for such period (not exceeding 365 days) from that expiry date or extension as you may specify in that notification, or
 - (ii) pay the amount of the guarantee.
- (e) The Guarantor represents and warrants that the amount of the guarantee herein contained does not exceed 20 per cent of the total paid up Capital and Reserves of the Guarantor.
- (f) This guarantee is governed by and shall be construed in accordance with the laws and regulations of the Kingdom of Saudi Arabia.

SCHEDULE 6

FORM OF PERFORMANCE BOND

00/00/0000

COLLEGES OF EXCELLENCE COMPANY

Granada Oasis Business Park

Building A4, 9th Floor

PO Box 2646, Riyadh 13241-7180

Since you have awarded our clients Messrs(the **Contractor**) a contract for the provision of capability building services at certain colleges in Saudi Arabia dated [●] (the **Contracts**). We, [●], (the **Guarantor**) hereby irrevocably and unconditionally guarantee the payment to you of SAR. -----.00 (**SAUDI RIYALS** ----- **ONLY**) being (---%) of the value of the Contract and accordingly covenant and agree as follows:

- (a) The Guarantor shall forthwith on demand made by you in writing and notwithstanding any objection by the Contractor pay you such amount or amounts as you shall require not exceeding in aggregate the above mentioned amount of SAR. -----.00 (**SAUDI RIYALS** ----- **ONLY**) by transfer to an account in your name at such bank in Saudi Arabia as you shall stipulate or in such other manner as shall be acceptable to you.
- (b) Any payment made hereunder shall be made free and clear of, and without deduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or with holdings of any nature whatsoever and by whomsoever imposed.
- (c) The covenants herein contained constitute unconditional and irrevocable direct primary obligations of the Guarantor. No alteration in the terms of the Contracts and no modification or extension of the Contracts or in the extent or nature of the work to be performed thereunder and no indulgence, allowance of time by you or other forbearance or concession or any other act or omission by you which but for this provision might exonerate or discharge the Guarantor shall in any way release the Guarantor from any liability hereunder.
- (d) This guarantee shall remain valid and in full force and effect up to the end of the -- day of the month of --- of the year ----- provided that it is a condition of this guarantee that, in the event you give the Guarantor on or prior to the said expiry date of this guarantee (or any subsequent extension of that expiry date in accordance with this proviso) signed written notification requesting an extension, the Guarantor will:
 - (i) automatically extend this guarantee for such period (not exceeding 365 days) from that expiry date or extension as you may specify in that notification, or
 - (ii) pay the amount of the guarantee.
- (e) The Guarantor represents and warrants that the amount of the guarantee herein contained does not exceed 20 per cent of the total of the paid up Capital and Reserves of the Guarantor.
- (f) This guarantee is governed by and shall be construed in accordance with the laws and regulations of the Kingdom of Saudi Arabia.

Trade Finance Operation

Riyadh – KSA

SCHEDULE 7

SERVICE PLANS AND PERFORMANCE REPORTS

Separate Service Plans and Performance Reports will be prepared in respect of each College.

SERVICE PLAN	DETAIL	SUBMISSION DEADLINE
College Assessment and Improvement Plan	<p><i>College Assessment</i></p> <p>The Training Provider must submit a detailed assessment report with quantitative and qualitative analysis of College performance. The report should include College performance across key metrics (drop-out rate, trainee satisfaction, trainer satisfaction and employment rate). The report should also include written qualitative assessment of the quality and performance of trainers, administrators and leaders (with individual comment on each employee); the quality of College services offered; the quality of facilities and equipment; the quality of curriculum; the quality of basic administrative processes (budgeting, procurement, etc.); and the willingness to change the College faculty.</p> <p><i>College Improvement Plan</i></p> <p>The Training Provider must submit a detailed improvement plan based on the findings of the College Assessment. The plan should clearly state the initiatives and actions to improve College performance on each component of the College Assessment and should offer clear KPIs that measure the desired outcomes (i.e., satisfaction scores, drop-out rates, etc.). Each initiative should have a clear timeline and set of actions, and each action should have a deadline and an action owner.</p>	15 May 2015
Annual Budget	<p>The Training Provider should submit an annual budget for the Academic Year for approval by the Procurer. The Training Provider must justify any new Capital Expenditures included in the proposed annual budget by reference to the College Improvement Plan. The proposed annual budget must identify specific mechanisms for further cost reduction.</p>	31 July 2015
Personalised Training Programs	<p>The Training Provider must submit a personalised training program for each trainer, leader and administrator in the College. The program should be written as a vertical text document and should include an assessment of employee performance (including key strengths and weaknesses) and a set of initiatives to improve the employee's capabilities (including how many hours per week the coach will</p>	31 December 2015

	dedicate to the employee, training topics that will be covered, methods of training, and the schedule of any proposed external training programs).	
Curricula Improvement Plan	<p>If the Training Provider decides to introduce new programs to the College, the Training Provider must submit a detailed plan for the new program. The plan should include rationale for introducing the program, including evidence of labour market demand / employer need; the courses and modules that would be offered in the new program; draft curricula for these courses; and an assessment of how the curricula correlate to the program NOSS.</p> <p>The Training Provider must also submit an updated program plan for each foundation program.</p> <p>The Training Provider must also submit any revisions to the curricula for courses in existing programs.</p>	31 December 2015

PERFORMANCE REPORT	DETAIL	SUBMISSION DEADLINE
Trimester Performance Report	<p>The Training Provider must submit a College performance report at the end of each Trimester, which should include a written qualitative assessment of overall College performance, including a summary of key changes and improvements and status updates for the various improvement initiatives outlined in the College Improvement Plan. The report must also include the following sections:</p> <p><i>General performance</i></p> <p>The college performance report should also include updated numbers for the following key metrics: financial performance (actual costs against the Annual Budget); drop-out rates of college students; graduation rates; student attendance rates; and student performance in SSS Institutional Reviews.</p> <p><i>Trainers</i></p> <p>The trimester performance report must also include a summary of key trainings and topics covered with the coach and an assessment of the trainer/leader's performance, with a focus on specific improvements and continued areas of strength or weakness. The Training Provider shall also submit the number of trainers/leaders employed at the College.</p>	Last day of each Trimester
Annual	The Training Provider must submit a more detailed	Last day of each

<p>Performance Report</p>	<p>College performance report at the end of each Academic Year, including an assessment of the College's performance, final levels for the purposes of calculating the KPI Payment, and an overall forward-looking strategy. The annual performance report must also include the following sections:</p> <p><i>Review of training activities</i></p> <p>The Training Provider must submit a more detailed performance management report for each trainer/leader covering how they progressed against expectations / targets and outlining improvement targets for the following Academic Year.</p> <p><i>Review of Improvement Plan</i></p> <p>The Training Provider must submit a detailed review of the College Improvement Plan with any changes or updates from the original College Improvement Plan.</p> <p><i>Review of Budget</i></p> <p>The Training Provider must submit a budget review comparing the actual financial performance of the College to the Annual Budget, with explanations for significant deviations.</p> <p><i>Proposed Next Year Budget</i></p> <p>The report should also include a proposed annual budget for the following Academic Year for approval by the Procurer. The Training Provider must justify any new Capital Expenditures included in the proposed annual budget by reference to the College Improvement Plan. The proposed annual budget must identify specific mechanisms for further cost reduction.</p>	<p>Academic Year</p>
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SCHEDULE 8

PROHIBITED ACTIVITY

(A) Activities which are prohibited by Applicable Laws.

Activities which are likely to expose persons to a significant risk to their health, safety or welfare.

Activities which might expose students to the risk of high pressure sales or marketing campaigns.

SCHEDULE 9
KEY PERSONNEL

Al-Baha College of Technology		
Role	Name	Date of Appointment
Provider Head	Anas ElJamal	19 th May 2015
Senior Management Coach	TBD	19 th May 2015
Senior Management Coach	TBD	19 th May 2015
Additional Personnel as Provider sees fit		

Khamis Mushait College of Technology		
Role	Name	Date of Appointment
Provider Head	Shakib Farhat	19 th May 2015
Senior Management Coach	TBD	19 th May 2015
Senior Management Coach	TBD	19 th May 2015
Additional Personnel as Provider sees fit		

SCHEDULE 10

PARENT COMPANY GUARANTEE

THIS PARENT COMPANY GUARANTEE is made on _____

BETWEEN:

- (1) [●] a corporation incorporated under the laws of [●] whose registered office is at [●] [(Parent Company 1)]/[Guarantor];
- (2) [●] a limited liability company incorporated under the laws of [●] whose registered office is at [●] (Parent Company 2),

(Parent Company 1 and Parent Company 2 are each, a Guarantor, and collectively, the Guarantors);] [Delete as appropriate]² and
- (3) COLLEGES OF EXCELLENCE COMPANY, a limited liability company incorporated under the laws of Saudi Arabia whose registered office is at P.O. Box: 2646, Riyadh 13241, A-4, 9th Floor, Granada Business Park, Eastern Ring Road, Riyadh, Kingdom of Saudi Arabia (the Procurer).
- (4) ().

WHEREAS:

- (A) By an agreement dated [●] (the Contract, which term includes all amendments to, variations of or supplements to it from time to time in force) the Procurer has agreed to engage [●] (the Training Provider) to provide capability building services for training and vocational colleges in Saudi Arabia (the Project).
- (B) It is a condition of the Contract that the Training Provider procures the execution of and delivery to the Procurer of a guarantee in respect of the joint and several obligations of the Training Provider from one or more parent companies of the Training Provider suitable to the Procurer in the form of this Parent Company Guarantee.
- (C) The [Guarantors have agreed to jointly and severally]/[Guarantor has agreed to] guarantee the due performance of the Contract by the Training Provider.

IT IS AGREED as follows:

- (A) (a) In consideration of the Procurer entering into the Contract with the Training Provider, and subject to the limitations set forth in this Parent Company Guarantee, [the Guarantor]/[each of the Guarantors acting on a joint and several basis]:
 - (i) as primary obligor guarantees to the Procurer the due and punctual performance by the Training Provider of each and every obligation, warranty, duty and undertaking of the Training Provider under and pursuant to the Contract when and if such obligations, warranties, duties and undertakings shall become due and performable according to the terms of such Contract;

² Delete depending on how many parent companies are applicable to the Training Provider.

- (ii) agrees, in addition to its obligations set out in Clause (A)(a)(i) above, to indemnify the Procurer against all losses, damage, costs and/or expenses which the Procurer may incur by reason of any breach by the Training Provider of its obligations, warranties, duties and undertakings under and pursuant to the Contract save that, subject to the other provisions of this Parent Company Guarantee (including without limitation Clause 0) this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Training Provider under the Contract; and
 - (iii) indemnifies the Procurer on demand against any loss or liability suffered by it if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Training Provider's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.
- (b) Notwithstanding anything to the contrary set forth in Clause (A)(a)(i) above or elsewhere in this Parent Company Guarantee, under no circumstances shall the Guarantor[s] be obligated for any amounts in excess of [30%] of Fee payable during the entirety of the Initial Term, being an amount of SAR [●] (the **Guarantee Maximum Amount**). Any capitalized term used in this Clause (A)(a)(b) (A)(b) and not defined in this Parent Company Guarantee shall have the meaning given to such term in the Contract.

[The]/[Each] Guarantor agrees that it shall not in any way be released from liability under this Parent Company Guarantee by any act, omission, matter or other thing and whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this Parent Company Guarantee including, without limitation and whether or not known to the Guarantor:

- (c) any arrangement made between the Training Provider and the Procurer; or
- (d) any alteration in the obligations undertaken by the Training Provider whether by way of any addendum or variation referred to in Clause 0 below or otherwise; or
- (e) any waiver or forbearance by the Procurer whether as to payment, time, performance or otherwise; or
- (f) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Training Provider or any other person; or
- (g) any unenforceability, illegality or invalidity of any of the provisions of the Contract or any of the Training Provider's obligations under the Contract, so that this Parent Company Guarantee shall be construed as if there were no such unenforceability, illegality or invalidity; or
- (h) any legal limitation, disability, incapacity or other circumstances relating to the Training Provider, or any other person; or
- (i) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Training Provider or any other person.

[The]/[Each] Guarantor, by this Parent Company Guarantee, authorises the Training Provider and the Procurer to make any addendum or variation to the Contract, the due and punctual performance of which

addendum and variation shall be likewise [jointly and severally] guaranteed by the Guarantor[s] in accordance with the terms of this Parent Company Guarantee.

This Parent Company Guarantee shall be a primary obligation of [the]/[each] Guarantor and accordingly the Procurer shall not be obliged before enforcing this Parent Company Guarantee to take any action in any court or arbitral proceedings against the Training Provider, to make any claim against or any demand of the Training Provider, to enforce any other security held by it in respect of the obligations of the Training Provider under the Contract or to exercise, levy or enforce any distress, diligence or other process of execution against the Training Provider. In the event that the Procurer brings proceedings against the Training Provider, [the]/[each] Guarantor will be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings.

This Parent Company Guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Training Provider, the Guarantor[s] or any other person) until the earlier to occur of: (a) all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Training Provider under the Contract shall have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Procurer may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security; and (b) the Guarantor[s] having paid an aggregate amount equal to the Guarantee Maximum Amount.

- (b) Until all amounts which may be or become payable under the Contract or this Parent Company Guarantee have been irrevocably paid in full, [the]/[each] Guarantor agrees that it shall not as a result of this Parent Company Guarantee or any payment or performance under this Parent Company Guarantee be subrogated to any right or security of the Procurer or claim or prove in competition with the Procurer against the Training Provider or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Procurer.
- (c) [The]/[Each] Guarantor agrees that it shall not hold any security from the Training Provider in respect of this Parent Company Guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Procurer.
- (d) Until all amounts which may be or become payable under the Contract or this Parent Company Guarantee have been irrevocably paid in full, if (notwithstanding the provisions of Clauses (A)(b) and (A)(c)), the [Guarantor has]/[Guarantors have] any rights of subrogation against the Training Provider or any rights to prove in a liquidation of the Training Provider, [the]/[each] Guarantor agrees to exercise such rights in accordance with the directions of the Procurer.
- (e) [The]/[Each] Guarantor shall procure that, during the term of this Parent Company Guarantee, there shall be no change in the control of the Training Provider.
- (f) There is a change in the control of the Training Provider for the purposes of this Parent Company Guarantee whenever any person has control of the Training Provider who did not have control of the Training Provider when the Contract was executed and the change in control shall have taken place without the prior consent of the Procurer, which consent may not be unreasonably withheld or delayed.
- (g) Each payment to be made by the Guarantor[s] under this Parent Company Guarantee shall be made in Saudi Riyals, free and clear of all deductions or withholdings of any kind, except

for those required by law, and if any deduction or withholding must be made by law, the Guarantor[s] will pay that additional amount which is necessary to ensure that the Procurer receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

- (h) The Guarantor[s] shall pay interest on any amount due under this Parent Company Guarantee from the date of demand until the date of payment in full (as well after as before any judgment) calculated on a daily basis at the rate of based on LIBOR plus 2%. LIBOR shall mean the London Interbank Offered Rate for three month USD deposits as published by the *Financial Times* on the day immediately preceding the due date for the relevant payment.

The Guarantor[s] will reimburse the Procurer for all legal and other costs (including taxes) incurred by the Procurer in connection with the enforcement of this Parent Company Guarantee.

The Procurer may appropriate any sum paid by the Training Provider, the Guarantor[s] or any other person or recovered or received on account of the obligations the subject of this Parent Company Guarantee as it sees fit, whether or not towards those obligations.

Any settlement or discharge between the Procurer and the Training Provider and/or the Guarantor[s] shall be conditional upon no settlement with security or payment to the Procurer by the Training Provider or the Guarantor[s] or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limiting the Procurer's other rights hereunder) the Procurer shall be entitled to recover from the Guarantor[s] as if such settlement or discharge had not occurred, the value which the Procurer has placed upon such settlement or security or the amount of any such payment.

[The]/[Each] Guarantor warrants that this Parent Company Guarantee is its legally binding obligation, enforceable in accordance with its terms, and that all necessary governmental and other consents and authorisations for the giving and implementation of this Parent Company Guarantee have been obtained.

The Procurer shall be entitled by notice in writing to the Guarantor[s] to assign the benefit of this Parent Company Guarantee at any time to any person without the consent of the Guarantor[s] being required, including to the Procurer's lenders to the Project. Any such assignment shall not release the Guarantor[s] from liability under this Parent Company Guarantee.

Any and all notices provided for herein, or communications bearing upon the obligation of the Parties, shall be given in writing and delivered by:

- (a) hand (against receipt), sent by courier, sent by facsimile, or transmitted by email or other electronic communication. Notices sent by fax transmission, email or other electronic communication shall be valid provided that a confirmation copy shall have been delivered by hand, or by courier service or registered mail within seven days of the transmission; and
- (b) delivered, sent or transmitted to the representative at the address for the recipient's communications as stated below.
- (c) If directed to the Procurer:

COLLEGES OF EXCELLENCE COMPANY

Dr. Ali N. Alghafis
Chairman of CoE Board of Directors
P.O. Box: 2646 Riyadh 13241

A4, 9th Floor, Granada Business Park,
Riyadh, Kingdom of Saudi Arabia

Tel: +966-11-5118585

(d) If directed to the Guarantor[s]:

[●]

Any change of address for communication shall take effect when notice thereof is given to the other Party.

A notice shall be received and effective or deemed to be received and effective in accordance with the following:

- (e) if sent by fax transmission, upon the earlier of the date and the time sent, provided that the sending machine issues a written confirmatory report that the message has been sent to the recipient's facsimile number before the recipient's close of business on a Business Day; or
- (f) by 10am on the next occurring Business Day if the sending machine does not issue such confirmatory report on the date sent, provided, however, that any facsimile given under this Contract shall only become effective notice if legibly received; in the event that a facsimile is not legibly received, the receiving Party shall use its best endeavours to notify the sending Party of that fact by return facsimile or by telephone without delay, failing which, it shall be deemed to have been legibly received; or
- (g) if delivered by hand (including by courier):
 - (i) at the time delivered, if before the recipient's close of business on a Business Day, or
 - (ii) at 10am on the next occurring Business Day if otherwise delivered.

If transmitted by email or other electronic communication unless a later time is specified in it, from the time it is actually received.

For the purposes of this Parent Company Guarantee Business Day means a day other than a Thursday or Friday or declared national holiday in Saudi Arabia.

- (i) No delay or omission of the Procurer in exercising any right, power or privilege under this Parent Company Guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Procurer provided for in this Parent Company Guarantee are cumulative and not exclusive of any rights or remedies provided by law.
- (j) A waiver given or consent granted by the Procurer under this Parent Company Guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
- (k) A waiver by the Procurer shall not constitute a continuing waiver and shall not prevent the Procurer from subsequently enforcing any of the provisions of this Parent Company Guarantee.

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Parent Company Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Parent Company Guarantee.

- (l) This Parent Company Guarantee is governed by and shall be construed in accordance with the laws of the Kingdom of Saudi Arabia.
- (m) [The]/[Each] Guarantor submits to the jurisdiction of the Board of Grievances of Saudi Arabia for all purposes relating to this Parent Company Guarantee and the Guarantor[s] irrevocably appoint[s] [●] as [its]/[their] agent for service of process.

For the avoidance of doubt, the Parent Company Guarantee is not intended to confer any legally enforceable rights on any person other than the parties, their successors in title and their assignees, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

IN WITNESS WHEREOF this Parent Company Guarantee has been executed on the day and year first above written.

Signed for and on behalf of

[●]

By: _____

Name:

Title:

Signed for and on behalf of

COLLEGES OF EXCELLENCE COMPANY

By: _____

Name:

Title:

SCHEDULE 11

TRAINING REQUIREMENTS

1. PERSONNEL QUALIFICATIONS

Al-Baha College of Technology		
Role	Education Qualification	Experience
Provider Head	Minimum PhD and above	Minimum 15 years' experience in leading and overseeing college operations as principle or dean
Senior Management Coach (Several)	Minimum Master's degree and above	Minimum 10 years of developed country experience
Trainer Coaches (Several)	Minimum Master's degree and above	Minimum 5 years of developed country experience in STEM environments

Khamis Mushait College of Technology		
Role	Education Qualification	Experience
Provider Head	Minimum PhD and above	Minimum 15 years' experience in leading and overseeing college operations as principle or dean
Senior Management Coach (Several)	Minimum Master's degree and above	Minimum 10 years of developed country experience
Trainer Coaches (Several)	Minimum Master's degree and above	Minimum 5 years of developed country experience in STEM environments

Appointment of Personnel holding qualifications lower than those stated in this Schedule 11 will be subject to approval by the Procurer

2. PERSONNEL QUOTA

Personnel Type	Unit	Al-Baha College of Technology	Khamis Mushait College of Technology
Classroom Trainer Coaches	Minimum FTE	8	8
	Provider Coach to College Personnel Ratio	1 to 9.1	1 to 9.7
Admin Personnel Coaches	Minimum FTE	2	2
	Provider Coach to College Personnel Ratio	1 to 8	1 to 7
Senior Management Coaches	Minimum FTE	5	5
	Provider Coach to College Personnel Ratio	1 to 4	1 to 5
Provider Head	Minimum FTE	1	1
	Provider Coach to College Personnel Ratio	1 to 1	1 to 1

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SCHEDULE 12

ANCILLARY SERVICES

Details of Ancillary Services will be incorporated in the Agreement by mutual agreement of the Parties at a later date.

SIGNATORIES

Signed for and on behalf of

COLLEGES OF EXCELLENCE COMPANY

By: _____
Name: Dr Ali N. Alghafis
Title: Chairman of COE Board of Directors

Signed for and on behalf of

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT FOUNDATION

By: _____
Name: Enrique Perez, J.D.
Title: Executive Director

Signed for and on behalf of

AL KHALEEJ TRAINING AND EDUCATION CORPORATION

By: _____
Name:
Title:

Chancellor Raúl Rodríguez
Rancho Santiago Community College District
2323 North Broadway, Suite 410
Santa Ana, CA 92706-1640

Date: 04 June 2015

Sub: Capability Building Contract – Safety, Security, Internet and CapEX

Dear Chancellor Rodríguez,


In response to inquiries during our conversation of Tuesday (2 June 2015), CoE is pleased to offer Rancho the following assurances in supplement of our CBP contractual agreement.

- We are deeply committed to ensuring the safety and security of all persons participating in this project, including the safety and security of faculty, staff, and students at the Colleges. You have already identified to us some safety and security concerns during the CIP process, and we will work with you as the project begins to address those concerns effectively. However, you may also encounter other concerns during operations on the campuses. You should address any such concerns as follows:
 1. Should Rancho identify, at any time during the contract, a safety or security concern that outside resources are needed to address, please contact CoE immediately for advice, guidance, and support, including support in obtaining any funds needed to remedy the situation.
 2. Depending on the nature of the concern, CoE may (at its discretion) refer Rancho to an outside service provider or to an appropriate business unit in TVTC. CoE will assist as needed to help Rancho to ensure that the concern is addressed in a timely and effective way.
 3. If initial efforts to resolve the situation fail, CoE will work with Rancho to find an acceptable resolution that does not compromise the safety or security of Rancho, CBP, or College personnel.
- CoE recognizes that, for Rancho's CBP operations to succeed, you need adequate, reliable Internet connectivity at both Colleges. This will require improvements to Internet bandwidth and to some elements of campus network infrastructure. Any work necessary to establish adequate quantity and reliability of Internet connectivity will be supported in the same way as discussed for safety and security, above. CoE understands and accepts that certain elements of Rancho's CBP operations may not be available until and unless effective Internet connectivity is provided, and CoE agrees to work with Rancho to ensure that any such issue is rectified as soon as possible and with minimal impact on Rancho's CBP operations.
- As clarified by the conversation yesterday, the CapEx budget available to Rancho (SAR 20 million per College) will be for the purposes of supporting and enriching the coaching activities supported by the OpEx budget. Consistent with the contract, Rancho will provide details on these activities in the Annual Budgets, the first of which is due 31 July of this year, for CoE review and approval.

Approved items will include professional development activities closely related to coaching activities, but will not include PD activities described as "transformation" work in the CIP and other, related communications between us. "Transformation" efforts discussed in the CIP that go beyond the provision of on-site coaching services will be deferred until such time as we may be mutually able to agree on scope of work and resources to be provided.

We look forward to working with you, and we hope you will consider us your full partners in making the CBP project a significant success.

Best regards,



Saleh Alamr
Chief Executive Officer

Chancellor Raúl Rodríguez
Rancho Santiago Community College District
2323 North Broadway, Suite 410
Santa Ana, CA 92706-1640

Date: 04 June 2015

Sub: Capability Building Contract – Intellectual Property Rights

Dear Chancellor Rodríguez,

This letter responds to your inquiry concerning the release of curricular and related intellectual property that may be developed by Rancho Santiago Community College Foundation and/or its subcontractors and assignees ("Rancho") for the TVTC Capability Building Project ("CBP") under open licenses.

Whereas the Colleges of Excellence ("CoE") recognizes the value of Open Educational Resources and other open-licensed intellectual property for the enhancement of Saudi technical and vocational training; and whereas CoE further recognizes the importance to Rancho's ability to participate in CBP of Rancho's continuing compliance with all internal, California state, and US national statutes, regulations, and policies concerning open intellectual property; therefore, CoE makes the following grant-of-rights to Rancho.

Upon assignment of the rights, title and interests in the intellectual property pursuant to clause 25 of the CBP contract to CoE, CoE agrees to grant an irrevocable royalty-free licence to Rancho to use and reproduce such intellectual property, and such licence shall include the right to grant sub-licences. For the purposes of this grant of rights, acceptable open licenses include:

- For content, any variant of the Creative Commons license that is current at the time of release (see <http://creativecommons.org/choose/> for current variants).
- For other technologies, any version current at time of release of one or more approved open-source licenses, from the list available at <http://opensource.org/licenses>.

Rancho will remain responsible for complying with all aspects of the CBP contract's intellectual property terms that are not in conflict with this grant of rights.

Best regards,


Saleh Alamr
Chief Executive Officer

DRAFT: JUNE 9, 2015

JOINT VENTURE AGREEMENT

BY AND BETWEEN

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT FOUNDATION

AND

AL KHALEEJ TRAINING AND EDUCATION CORPORATION

FOR THE FORMATION

OF

[R/AK JOINT VENTURE CORPORATION]

("[JVCO]")

DATED AS OF [_____] , 2015

DRAFT: JUNE 9, 2015

JOINT VENTURE AGREEMENT

THIS JOINT VENTURE AGREEMENT (the "*Agreement*") is made and entered into as of the [] day of [], 2015 (the "*Effective Date*") by and between **RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT FOUNDATION**, a United States tax-exempt educational corporation organized and existing under the laws of the State of California ("*RSCCDF*"), with its principal business address located at 2323 N. Broadway, Suite 410, Santa Ana, CA 92706 and **AL KHALEEJ TRAINING AND EDUCATION CORPORATION**, a public joint stock company organized and existing under the laws of the Kingdom of Saudi Arabia ("*Al Khaleej*"), with its principal business address located at Burj Al Khaleej Training and Education, Olaya Street, 5th Floor, Riyadh, Kingdom of Saudi Arabia. RSCCDF and Al Khaleej are sometimes referred to herein individually as a "*Party*" and, collectively, as the "*Parties*".

RECITALS:

- A. RSCCDF is a foundation established to support the programs and services of the Rancho Santiago Community College District (the "*District*"), and has subject to its Articles of Organization and Bylaws all of the powers granted by the laws governing auxiliary organizations of the California Community Colleges and by the Nonprofit Corporation Law of the State of California, which includes the entry of RSCCDF into agreements that create a revenue stream to support the activities of the District, as well as creating potential opportunities for educational and cultural exchanges for the benefit of the District community.
- B. Al Khaleej is a public company established in the Kingdom of Saudi Arabia ("*KSA*"), with significant experience and expertise in the operation and administration of professional education and training services within the Kingdom.
- C. The Government of Saudi Arabia embarked on a national program for expanding and improving technical and vocational education and training in the KSA. To this end, the Colleges of Excellence Company ("*COE*"), a Saudi publicly-funded private company and a subsidiary of the Technical and Vocational Training Corporation ("*TVTC*"), launched a multi-stage tender process (the "*Tender*") aimed at selecting international training providers to provide capability building, training, operation and/or management services to a number of training and vocational education colleges in the KSA, the infrastructure for which is offered by, through or on behalf of COE;
- D. Following successful participation in the Tender, COE selected RSCCDF to provide capability building and training services to COE in respect of the AlBaha College of Technology and the Khamis Mushait College of Technology (collectively, the "*Training Colleges*"), the specific duties and services to be provided by RSCCDF under this award being set out in that certain Capability Building Contract to be entered into between Colleges of Excellence Company, RSCCDF and Al Khaleej (the "*CBC*"), the form of which is attached hereto as Exhibit D.
- E. RSCCDF requires a local Saudi company to collaborate with it in providing its services under the CBC, and Al Khaleej wishes to act in that capacity. In furtherance of such

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collaboration, the Parties have previously entered into a Memorandum of Understanding Regarding Joint Venture to Develop Community Colleges in the Kingdom of Saudi Arabia, effective as of [_____] 2015 (the "MOU") establishing the basic tenets and business elements of the proposed Joint Venture, and calling for them to enter into a definitive agreement incorporating the provisions of the MOU. Accordingly, each of the Parties desires to enter into this Agreement, providing for their joint collaboration and cooperation (the "Joint Venture") and enabling them jointly to create the infrastructure and ongoing management and administration of the CBC with respect to the Training Colleges, as well as any other colleges as to which the COE may award similar rights in the future, and to use this agreement to define all of the rights, benefits, duties, obligations and responsibilities which each such Party shall have in the Joint Venture and to each other, in all cases subject to and in accordance with the provisions of this Agreement, as the same may be amended or modified in writing by mutual agreement of the Parties in the manner provided for herein.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

AGREEMENT:

1. Establishment of the Joint Venture.

- (a) As soon as reasonably practicable following the Effective Date, the Parties shall work together to create the infrastructure necessary to implement the purposes of this Joint Venture, to perform the CBC with respect to the Training Colleges in accordance with its terms, and to share together the opportunities presented by the COE as contemplated herein. To that end, the Parties shall instruct their respective legal counsel and tax advisors to create JVCO as a limited liability company in KSA, at all times seeking to provide each Party with all of the rights and benefits of the Joint Venture as described herein, as well as providing to each such Party the most favorable tax consequences available under applicable law in KSA with regard to the proceeds received by each of them from the conduct of the business created and undertaken by the Joint Venture (the "JV Business"). Each Party hereby acknowledges to and agrees with the other that time is of the essence in creating the Joint Venture, establishing JVCO and implementing the CBC as required by COE, and to that end each shall use its commercially reasonable best efforts to accomplish all of those matters as expeditiously as possible.
- (b) As soon as practicable, but no later than two (2) Business Days, following the Effective Date (a "Business Day" referring to a day on which banks in KSA and the State of California are open for normal business), the Parties shall procure the establishment of a committee (the "Steering Committee") to coordinate and monitor the licensing and incorporation processes with respect to JVCO in the

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KSA, which committee shall comprise two (2) members, of which one (1) member shall be appointed by each Party. The Steering Committee shall take the lead in preparing and pursuing applications for the licensing and registration of JVCO with all the relevant authorities in KSA. Each Party agrees to take any and all actions and to sign any and all documents which may be necessary or appropriate under applicable law to finalize the formation of JVCO as soon as possible following the Effective Date, including without limitation any of the following which may be necessary:

- (i) obtaining licenses, approvals and consents from the Saudi Arabian General Investment Authority (“SAGIA”) and the Saudi Arabian Ministry of Commerce and Industry (“MoCI”) for the formation of the JVCO;
 - (ii) executing before the Notary Public at the MoCI the articles of association of JVCO (the “Articles”);
 - (iii) publishing the Articles and causing JVCO to be recorded in the companies and commercial registries at the MoCI.
- (c) Al Khaleej shall fund the expenses of the Steering Committee and its activities as indicated above, subject to reimbursement from the JVCO as described herein.
- (d) The Steering Committee shall keep a record of all costs and expenses incurred by each Party in relation to the licensing and registration of JVCO in the KSA, and as soon as reasonably practicable following the incorporation of JVCO, JVCO shall reimburse such costs and expenses (as well as any other costs and expenses incurred by either Party in relation to the JV Business) to the relevant Parties.

2. JV Business and Novation of CBC.

- (a) Unless otherwise agreed by mutual consent of the Parties, the JV Business shall consist in the provision of capability building, training, operation and/or management services in relation to vocational education colleges owned, managed, operated or otherwise administered by COE, including without limitation the Training Colleges in accordance with the CBC.
- (b) RSCCDF, with the full support of Al Khaleej, shall procure that, as soon as practicable following execution of the CBC with COE and formation of JVCO, the CBC shall be novated to the JVCO in full. In connection therewith, in addition to providing such information about Al Khaleej as COE may require, Al Khaleej shall arrange for the provision to COE of the bonds required under clause 9 of the CBC, in order to accomplish such novation and eliminating to the greatest extent possible the joint and several obligations of the individual parties pursuant to clause 2.3(a) of the CBC.

DRAFT: JUNE 9, 2015**3. Capital of JVCO.**

- (a) The share capital of JVCO shall be limited to [one hundred thousand Saudi Riyals (SR 100,000)] or such greater amount as required by the competent authorities in the KSA, and subject to the foregoing, shall be divided into five thousand (5,000) shares of par value [SR 20] each, each of which shall rank *pari passu* with each other in all respects (each such share being hereinafter referred-to as a “Share” and in plural as “Shares”).
- (b) The shareholding of the Parties in JVCO shall be as follows:

Party	Number of Shares	Par Value in SR	Percentage Shareholding (%)
RSCCDF	2,550	51,000	51%
Al Khaleej	2,450	49,000	49%
Total	5,000	100,000	100%

- (c) Each of the Parties shall only be liable to subscribe for the number of Shares to which it has agreed, pursuant to this Agreement, and shall not be liable for the obligations of any other Party. Each of the Parties shall deposit with the bank chosen by the Parties to hold JVCO’s account, the entire pro rata portion of the subscription monies stated opposite their name in the preceding paragraph.

4. Financing of JVCO and Budgeting.

- (a) **Limited Liability.** Except as otherwise expressly provided herein, nothing in this Agreement shall be construed to require a Party to increase its investment in JVCO, or to require any Party to assume liability for any obligation of another Party either for JVCO or to JVCO.
- (b) **General Framework for Additional Financing.** The Parties agree that the financial requirements for JVCO to accomplish its JV Business, including without limitation the amounts necessary to cover (i) the specific bonding obligations required under the CBC; (ii) any unpaid obligations required to be paid under the Preliminary Agreement with fiveDlearning, Inc., a Delaware corporation (“5DL”) concerning assistance to JVCO; and (iii) the working capital and other expenses as JVCO may need to sustain its business operations and fully comply with the Parties’ obligations under the CBC (collectively, the “JVCO Expenses”), shall whenever possible be met from the paid-in capital and cash flow generated from the operations of the JV Business, but that, if and when additional financing is required, it shall be obtained through loans from Al Khaleej, it being acknowledged and agreed that such loans will be extended only to cover costs set out in JVCO’s relevant Budgets (as defined

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herein). Funding by Al Khaleej shall be structured as profit-bearing Shari'ah-compliant loans, with profit on such debt being calculated at the rate of [●] percent ([●]%) per annum ("Loans"). Such Loans shall rank *pari passu* with all other unsecured, unsubordinated liabilities of JVCO, provided, however, that notwithstanding anything else contained herein, such Loans shall be fully-subordinated to the Management Fees and Technical Services Fees (as defined hereunder, and collectively referred to as the "*Foundation Fees*") payable to RSCCDF under its applicable agreements. Subject to JVCO's obligation to pay Management Fees and Technical Service Fees on a priority basis pursuant hereto, the Loans shall be structured to be repaid within one (1) year of their relevant dates, provided that such schedule of repayment does not render JVCO insolvent or otherwise unable to pay its obligations as they come due or meet its Budget requirements, and provided, further, that the maturity date of any such Loans shall under no circumstance extend beyond the date upon which JVCO's term expires. Subject to JVCO's obligation to pay Management Fees and Technical Service Fees required under the CBC in priority pursuant hereto, no amount shall be declared, distributed or paid to any of the Parties unless and until any Loans extended by Al Khaleej to JVCO are repaid in full, and the parties further agree to apply any excess revenues of JVCO to repay such Loans as soon as reasonably practicable.

- (c) The Parties hereby acknowledge that, should either Party pay for any liability of JVCO (which includes, without limitation, any payment made pursuant to the Parties' joint and several guarantee of JVCO's performance of the CBC, or pursuant to any security extended by Al Khaleej as collateral for JVCO's bonding obligations under the CBC), JVCO shall fully reimburse to the relevant Party the full amount paid on behalf of JVCO, provided that the amounts paid by Al Khaleej shall be treated as Loans structured and repayable in accordance with the principles laid down in the preceding paragraph.
- (d) **Budgets.** In determining the anticipated amounts which will be required to conduct the JV Business on an annual basis, the Parties shall work together to create a budget for the funding of JVCO for each fiscal year (January 1 through December 31) in which this Agreement is in effect (each, a "*Budget*"). Attached as Exhibit D to this Agreement is the initial Budget approved by the Parties, covering costs which the Parties anticipate shall be required for the operation and maintenance of JVCO from the date it is formed through and including December 31, 2015, which includes the amount determined in good faith by RSCCDF as necessary to fulfil JVCO's obligations under, and during the first contract year of, the CBC (the "*First Year Budget*"). Each subsequent Budget shall be agreed upon between the Parties as of a date which is not less than ninety (90) days prior to the date that it is intended to become operative, and following the start of the fiscal year as to which any such Budget has been created, the Parties shall meet at least one time per fiscal quarter to determine if the Budget is still appropriate as previously agreed, or if any adjustments thereto are necessary or desirable, each of such adjustments requiring the mutual agreement of the Parties in accordance with the terms hereof to become effective.

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- (e) **Funding of First Year Budget.** Subject to paragraph (b) of this Section 4, Al Khaleej shall fund twenty percent (20%) of the First Year Budget promptly upon the formation of JVCO and the opening of its bank account, and the remaining portion shall be paid as indicated in the First Year Budget.

5. Governance of JVCO.

- (a) Meetings of the shareholders of JVCO (the "*Shareholders*") shall be convened and conducted in accordance with the Articles. The Articles shall provide that no meeting of the Shareholders shall be held unless attended by duly appointed/delegated representatives of each Shareholder, and the adoption of any Shareholder resolution in respect of any matter shall require the unanimous approval of all Shareholders.
- (b) JVCO shall be managed by a board of managers (the "*Board*") consisting of two (2) members, one (1) appointed by each Party. All meetings of the Board shall be convened and conducted in accordance with the Articles. The Articles shall provide that no meeting of the Board shall be held unless attended by both members thereof, and the adoption of any Board resolution in respect of any matter shall require the unanimous approval of all Board members. Subject to RSCCDF's prerogatives and duties under the Management Agreement (as defined herein), including without limitation its responsibility, as the Manager, to implement, oversee and control all aspects of the JVCO's operation of colleges in the KSA under the CBC, the Board shall have full power and authority for the management of the Company, and such authority shall not be limited, save for such matters which are exclusively reserved by applicable law to the Shareholders.
- (c) The Board shall appoint an executive manager acceptable to both Parties (the "*Executive Manager*"). The Executive Manager shall have such powers and authority as delegated to him/her by the Board from time to time.
- (d) Without prejudice to any requirement under applicable law for approval by the Shareholders, the following matters (each a "*Reserved Matter*" and together the "*Reserved Matters*") shall require a resolution by the Board and may not be delegated to the Executive Manager or any other party:
- (iv) any modification to the Articles;
 - (v) any increase of the JVCO's Capital;
 - (vi) any dissolution, liquidation or winding-up of the JVCO;
 - (vii) any merger, demerger or amalgamation of the JVCO with or into another person;

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- (viii) the adoption of, or amendment to, any Budget.
 - (ix) any action or proposed action by the JVCO, which is materially inconsistent with or outside the scope of the relevant Budget.
 - (x) the creation of any borrowings by JVCO, other than shareholder loans extended pursuant to the terms hereof);
 - (xi) the giving of loans or guarantees by the JVCO;
 - (xii) the creation of any encumbrance over the whole or any material part of the business undertakings or assets of JVCO or over any Shares in JVCO, other than encumbrances made as collateral for permitted borrowings or otherwise created in the ordinary course of business;
 - (xiii) the entering into any agreement with any Shareholder or any party related to any Shareholder, and the authorization of any sub-contracting, delegation or assignment by any Shareholder or any party related to a Shareholder of all or part of its rights, obligations or duties under any agreement entered into with JVCO;
 - (xiv) the entering into any contract with COE in relation to colleges owned, managed, operated or otherwise administered by COE, other than the CBC.
- (e) The Board members and Executive Manager shall be entitled to such remuneration from JVCO for his/her services as may be mutually-agreed by the Parties from time to time during the Term hereof. However, costs and expenses incurred by Board members and the Executive Manager in performing their duties shall be paid and/or reimbursed by the JVCO on an actual cost basis, provided the same have been included in the relevant Budget, or otherwise appropriately approved in accordance with the provisions of this Agreement.

6. Operation of the Joint Venture. The Parties have determined that in order to accomplish all of the purposes and objectives of the Joint Venture, as contemplated herein, throughout the Term (as defined below) of this Agreement, they shall each contribute to the Joint Venture the respective services, efforts and support called for under the following agreements, each of which shall be entered into between the applicable Party and JVCO as described below:

- (a) Management Services Agreement. The Parties shall cause JVCO, once formed, to enter into a Management Services Agreement with RSCCDF, pursuant to which RSCCDF shall be responsible for management of all activities required under the CBC for and on behalf of the Joint Venture, and in general provide oversight and control over all aspects of JVCO's

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operation of, or the provision of services to, any colleges or institutions as to which COE may hereafter grant rights to JVCO. RSCCDF's services shall include, without limitation, providing all the strategies, methodologies and techniques pertaining to recruitment, curricula, faculty development, vocational training, work programs, class management and other matters of importance to the successful operation of the Training Colleges, and other similar institutions, which JVCO shall be engaged to service under the CBC or any other contract (the "*Management Services*"). In providing the Management Services, RSCCDF may engage certain sub-contractors to assist in performing such duties under the Management Services Agreement as RSCCDF shall delegate to them, it being understood and agreed that (i) such delegation shall always be contingent on the prior authorization of JVCO, which authorization shall require a Board resolution, (ii) the delegation shall not relieve RSCCDF from its duties under the Management Services Agreement, and (iii) subject to compliance with the immediately preceding Clauses (i) and (ii), JVCO shall cover all of the fees and expenses of such sub-contractors as RSCCDF shall deem reasonably necessary to perform the Management and Technical Services Agreements, and/or to meet JVCO's obligations under the CBC, including without limitation compliance with all tax withholding and other laws and regulations which may be applicable to such sub-contractors. The Management Services Agreement shall be substantially in the form attached as Exhibit A to this Agreement, with such further modifications as the Parties may mutually agree, as evidenced by the execution thereof by an authorized representative of each such Party.

- (b) The Parties shall also cause JVCO, once formed, to enter into a Technical Services Agreement with RSCCDF, pursuant to which RSCCDF shall provide certain technical assistance in connection with the CBC, which services may include, without limitation, identifying and making arrangements with certain employees and/or contractors for the Joint Venture on a temporary basis, in day to day operations of JVCO ("*Technical Services*"). In providing the Technical Services, RSCCDF may engage certain sub-contractors to assist in performing such duties under the Technical Services Agreement as RSCCDF may delegate to them, it being understood and agreed that (i) such delegation shall always be contingent on the prior authorization of JVCO, which authorization shall require a Board resolution, (ii) the delegation shall not relieve RSCCDF from its duties under the Technical Services Agreement, and (iii) subject to compliance with the immediately preceding Clauses (i) and (ii), JVCO shall cover all of the fees and expenses of such sub-contractors, including without limitation compliance with all tax withholding and other laws and regulations which may be applicable to such sub-contractors. The Technical Services Agreement shall be substantially in the form attached as Exhibit B to this Agreement, with such further modifications

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as the Parties may mutually agree, as evidenced by the execution thereof by an authorized representative of each such Party.

- (c) The Parties shall also cause JVCO, once formed, to enter into a further Administrative Services Agreement with Al Khaleej, pursuant to which Al Khaleej shall provide all administrative services necessary for the day-to-day operation of JVCO and administration of the Joint Venture business, consistent with the terms of the Articles, and such other guidelines and policies as may be adopted jointly by the Parties from time to time during the term of the Joint Venture (the "*Administrative Services*"). Such Administrative Services shall include, without limitation, handling the accounting, banking, employment, compliance, marketing, sales, facilities management and all other aspects of the administration and operation of JVCO, other than those items specifically reserved to RSCCDF under the Management Services Agreement and the Technical Services Agreement. In providing the Administrative Services, Al Khaleej may engage certain sub-contractors to assist it under such terms and conditions as Al Khaleej shall delegate to them, it being understood and agreed that (i) such delegation shall always be contingent on the prior authorization of JVCO, which authorization shall require a Board resolution, (ii) the delegation shall not relieve Al Khaleej from its duties under the Administrative Services Agreement, and (iii) subject to compliance with the immediately preceding Clauses (i) and (ii), JVCO shall cover all of the fees and expenses of such sub-contractors, including without limitation compliance with all tax withholding and other laws and regulations which may be applicable to such sub-contractors. The Administrative Services Agreement shall be substantially in the form attached as Exhibit C to this Agreement, with such further modifications as the Parties may mutually agree, as evidenced by the execution thereof by an authorized representative of each such Party.
- (d) JVCO's financial books, records and statements of account shall be kept at the principal place of business of JVCO, or such other place as the Parties may mutually agree, and shall be made available to each Party, or its authorized representatives, at all reasonable times during normal business hours, each of whom shall have the right at all reasonable times to inspect and copy the same. Whenever reasonably requested by either Party, JVCO shall make information regarding its JV Business, operations and financial condition available to such Party, and its agents and representatives. JVCO shall designate one (1) independent auditor to be jointly selected by the Parties to audit the books and records of Al Khaleej annually, and provide confirmation that all amounts have been properly paid by JVCO in accordance with the applicable provisions of this Agreement.

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- (e) In its administration of the Joint Venture, Al Khaleej shall, through professional and legal assistance provided by parties reasonably acceptable to RSCCDF, ensure that in all aspects of the conduct of the JV Business, JVCO is in full compliance with all laws, rules and regulations applicable to such activities within the Kingdom of Saudi Arabia, including, without limitation, ensuring that JVCO obtains all licenses, permits and other authorizations necessary for it to conduct the JV Business as contemplated herein, in the CBC and in its Articles. Al Khaleej shall also ensure that applicable corporate governance policies appropriate to JVCO under the laws of KSA, including but not limited to all business operations, human resources, the payment of compensation, the performance of all contracts, taxation and employee benefits are implemented and maintained by JVCO with respect to all employees, third party providers to JVCO, and other individuals and entities which now have or which come to have a commercial or financial relationship of any nature with JVCO. In addition, Rancho has advised Al Khaleej that, as a corporation subject to US law generally, and specifically as a regulated, tax-exempt educational organization in the United States, it must at all times comply with the body of federal and state laws, regulations and rules (collectively, "US Law") applicable to such entities in the conduct of their business. To the extent that Rancho and/or its professional advisors notify Al Khaleej as to compliance requirements of US Law that are applicable to the JV Business and Rancho's activities on the behalf thereof, Al Khaleej shall take all such actions as are necessary or desirable to ensure that such US Laws are fully complied with. Furthermore, to the extent that JVCO may engage the services of persons who are subject to US Law as employees or contractors, or in other relevant capacities, Al Khaleej shall take all such actions as are necessary or desirable to ensure that such US Laws are fully complied with. In addition, Al Khaleej will, and will cause JVCO to, extend all reasonable assistance to RSCCDF (to the extent not inconsistent with applicable Saudi laws) for purposes of complying with RSCCDF's reporting obligations under US Law in relation to the JV Business.
- (f) During the Term of this Agreement, as part of its administrative duties, Al Khaleej shall cause JVCO to obtain and to maintain property damage, public liability, casualty, and general insurance as is necessary, usual or customary for the proper conduct of activities such as the JV Business by companies operating within the Kingdom of Saudi Arabia. The cost thereof shall be an expense of JVCO, and each insurance policy shall name the Parties as additionally-insured parties covered by all such policies of insurance.

7. **Consideration for the Performance of the Parties' Obligations.** In consideration of the contribution of their respective services to the Joint Venture in the manner indicated above, the following payments shall be made by the JVCO to the Parties indicated, which

payments shall be made as follows:

- (a) JVCO shall pay to RSCCDF, as compensation for its Management Services and on or before the 15th day of each month during the Term of this Agreement, an amount equal to eight percent (8%) of the gross revenues generated from all sources by JVCO during the immediately preceding month (the "*Management Fee*");
- (b) JVCO shall pay to RSCCDF, as compensation for its Technical Services and on or before the 15th day of each month during the Term of this Agreement, an amount equal to two percent (2%) of the gross revenues generated from all sources by JVCO during the immediately preceding month (the "*Technical Services Fee*"); and
- (c) JVCO shall pay to Al Khaleej, as compensation for its Administrative Services and on or before the 15th day of each month during the Term of this Agreement, an amount equal to [●] percent ([●]%) of the gross revenues generated from all sources by JVCO during the immediately preceding month (the "*Administrative Services Fee*"), provided that payment of the Administrative Services Fee shall be subordinate to RSCCD's entitlement in priority to the Management Fee, as well as any other expenses of JVCO payable during such month.
- (d) All billing and collection for services performed by JVCO in furtherance of the JV Business shall be undertaken by JVCO in accordance with such guidelines as JVCO may adopt from time to time during the Term of this Agreement.
- (e) All banking and other financial accounts which may be established in KSA for the benefit of the Joint Venture shall be separate, segregated accounts in the name of JVCO, maintained at such banks as the Parties may mutually agree, and shall not be comingled with any other accounts or funds belonging to Al Khaleej, any Affiliate thereof or any other party. For the purposes of this Agreement, "*Affiliate*" means in relation to any specified person, any other person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the specified person, provided that JVCO, its subsidiary undertakings and associated undertakings shall not be regarded as being the Affiliate of any Shareholder; and, "*Control*" means the power of a person (or persons acting in concert) to secure that the affairs of another are conducted directly or indirectly in accordance with the wishes of that person (or persons acting in concert):
 - (i) by means of the ownership of shares or the possession of voting rights; or
 - (ii) by virtue of any powers conferred by law, constitutional documents or other documents or arrangements (including proxy voting arrangements, contractual arrangements or other means),

and related expressions such as "**Controller**", "**Controlled**", and "**Controlling**"

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shall be construed accordingly;

8. Dealing in Shares

A Shareholder shall not do, or agree to do, any of the following during the continuance of this Agreement:

- (a) sell, transfer or otherwise dispose of all or any part of his Shares or any legal or beneficial interest therein or assign or otherwise purport to deal therewith or with any interest therein;
- (b) grant an option over any Share or any interest in any Share;
- (c) pledge, mortgage, charge or otherwise encumber any Share or any interest in any Share; or
- (d) enter into any agreement in respect of the votes attached to any Share (including, without limitation, any agreement to waive, not exercise or otherwise lock-up the voting rights attached to any Share).

9. Promotion of the JV Business

- (a) The Shareholders shall use their respective best endeavors to promote and develop the JV Business to the best advantage of the JVCO.
- (b) Except as otherwise permitted under paragraph (c) hereunder, for so long as this Agreement remains in full force and effect, a Shareholder shall not, and shall procure that none of its Affiliates shall, without the prior written consent of the other Shareholder, either alone or jointly with or through (which includes by ownership of any share, or direct or indirect control) any person, directly or indirectly:
 - (i) for as long as this Agreement is in effect, establish, invest in, carry on, be engaged in or be concerned in any way (including as advisor), other than through JVCO, in, any business which is engaged in providing capability building, training, or college operation/management services through an agreement with COE (a "Competing Business"); and
 - (ii) subject to the relevant terms of the Technical Services Agreement, from the Effective Date and not less than two years thereafter, engage or employ, or solicit or contact with a view to the engagement or employment by any person, any employee of JVCO, with the intent that each of these restrictions shall constitute an entirely separate and independent restriction on each of the Parties and its Affiliates.
- (c) The following shall apply whenever a Shareholder considers involvement in any

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business activity in KSA which is a Competing Business:

- (i) the relevant Shareholder must notify the Board (through its appointed representative at the Board) providing a description of the contemplated project or transaction and the terms thereof; the Board shall discuss the possibility of pursuing the project/transaction through JVCO for sixty (60) days; and
- (ii) if by the end of the above period, the Board is not able or willing to make a resolution providing for the implementation by JVCO of the relevant project or transaction, other than by reason of resistance by the representative of the notifying Shareholder, such Shareholder shall be free to pursue the relevant project or transaction without the other Shareholder provided that it does so on the same terms and conditions as originally conveyed to the Board.
- (d) The Parties consider that the restrictions contained in this Section 9 are reasonable, but if any such restriction shall be found to be unenforceable but would be valid if any part of it were deleted or the period or area of application reduced, such restriction shall apply with such modification as may be necessary to make it valid and effective.

10. Proprietary Rights of the Parties; Confidentiality.

- (a) All trademarks, copyrights, trade secrets, concepts, ideas, methods, designs, business strategies, processes, developments, specifications, data, records, marketing strategies, curriculum and other intellectual property rights and proprietary items developed by or belonging to RSCCDF at the time of this Agreement or are hereafter independently developed by RSCCDF (collectively, the "*RSCCDF IP*"), shall remain the sole and exclusive property of RSCCDF, and no other person, including Al Khaleej or JVCO shall have any claims or rights, title or interest of any kind in or to any of such RSCCDF IP by virtue of this Agreement or otherwise. RSCCDF IP may only be used by JVCO in furtherance of the JV Business in such manner and to such extent as RSCCDF has consented to in writing prior to such use.
- (b) All trademarks, copyrights, trade secrets, concepts, ideas, methods, designs, business strategies, processes, developments, specifications, data, records, marketing strategies, curriculum and other intellectual property rights and proprietary items developed by or belonging to Al Khaleej at the time of this Agreement or are hereafter independently developed by Al Khaleej (collectively, the "*Al Khaleej IP*"), shall remain the sole and exclusive property of Al Khaleej, and no other person, including RSCCDF or JVCO shall have any claims or rights, title or interest of any kind in or to any of such Al Khaleej IP by virtue of this Agreement or otherwise. Al Khaleej IP may only be used by JVCO in furtherance of the JV Business in such manner and to such extent as Al Khaleej

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has consented to in writing prior to such use.

- (c) To the extent that during the existence of the Joint Venture any person (other than RSCCDF or Al Khaleej, directly or through their individual agents or Affiliates) shall create or develop any intellectual property or proprietary right for use exclusively by or in connection with the JV Business (a "*JV Right*"), then such JV Rights shall belong to JVCO, and no Party shall have the right to own, claim, exploit or otherwise use any of such rights without a written agreement signed by each of them specifying the permitted usage and other aspects of the proposed arrangement.
- (d) Al Khaleej, as part of its administrative duties, shall take all such actions as are reasonably required or requested by RSCCDF to protect all existing or future RSCCDF IP rights used by the Joint Venture, and all JV Rights which may be created or developed during the Term hereof, in concert with RSCCDF and in accordance with its overall intellectual property processes and protection strategies, as the same may be communicated to Al Khaleej from time to time during the Term of this Agreement.
- (e) Each Party hereby acknowledges that, in connection with preparation, documentation and consummation of the Joint Venture hereunder, such Party (in each case, the "*Disclosing Party*") may disclose to the other Party (in each case, the "*Receiving Party*") information which is proprietary, confidential and valuable to the Disclosing Party, including without limitation the RSCCDF IP, the Al Khaleej IP, and any and all other confidential information used by the Disclosing Party in its operations and/or developed for use by the Joint Venture (all of which is referred to herein collectively as such Party's "*Confidential Information*"). Each Receiving Party shall maintain the Disclosing Party's Confidential Information in strict confidence and shall not disclose such Confidential Information, directly or indirectly, to any party, or use such Confidential Information for the benefit of the Receiving Party or any other party, without the Disclosing Party's prior written consent; provided, however, that the Receiving Party may disclose such Confidential Information only to authorized employees of the Receiving Party who require such information solely in furtherance of the Receiving Party's obligations under this Agreement or in furtherance of its obligations hereunder, and only if such persons are bound by written agreements setting forth similar prohibitions regarding the disclosure or use of such Confidential Information.
- (f) The obligations with regard to confidentiality hereunder shall not extend to any Confidential Information which: (i) at the time of its disclosure is in the public domain through no fault of the Receiving Party, its employees, advisors or agents, or thereafter becomes part of the public domain by publication or otherwise through no fault of the Receiving Party, its employees, advisors or agents; (ii) the Receiving Party can establish by independent confirmation was property in its possession prior to the time of disclosure to it; (iii) is independently made

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available to the Receiving Party by a third party who has not violated the law, or a confidential relationship with the Disclosing Party; or (iv) is required to be disclosed by legal process, provided, however, that the Receiving Party uses its best efforts to limit the disclosure and maintain confidentiality and timely informs the Disclosing Party and permits the Disclosing Party to attempt by appropriate legal means to limit such disclosure.

11. **Taxes.** Subject to applicable law, each Party shall be solely responsible for reporting and paying any tax obligations imposed on such Party for the receipt of income paid to it by the Joint Venture. Each Party further acknowledges to and agrees with the other that none of its employees or subcontractors shall be eligible for any employee benefits provided by the other Party to its employees, including, but not limited to, vacation, medical, dental, pension or other similar benefits, by virtue of working in or with the Joint Venture. With respect to all payments in respect of taxes or zakat required to be made by JVCO to the government of the Kingdom of Saudi Arabia in connection with each Party's participation in the Joint Venture as contemplated herein (the "*Collective Tax Burden*"), the Parties hereby agree that JVCO shall make payment to KSA of all amounts required to fulfill such Collective Tax Burden, with each Party bearing one-half of the Collective Tax Burden out of the net amounts payable to each such Party in accordance with Section 7 of this Agreement. Under no circumstances shall either Party be responsible for or make any payment in connection with the tax obligations of the other Party in any jurisdiction other than that of the Kingdom of Saudi Arabia, unless otherwise agreed in writing between the Parties.

12. **Default**

- (a) If any Party (the "*Defaulting Party*"):
- (i) files a petition seeking adjudication of its own bankruptcy or insolvency, or any such petition is filed against such Party and that petition is not dismissed within sixty (60) days, or if such Party commences proceedings for its own dissolution or liquidation, or if a receiver, administrator or trustee is appointed in respect of a substantial portion of the business or assets of such Party or such Party (or a person Controlling such Party) demonstrates an inability to settle debts as they fall due; or
 - (ii) is in default of a material obligation hereunder and fails to remedy such default within a period of sixty (60) days after receiving written notification of such default from the other Party which is not in default;

then, subject to obtaining the prior approval of COE as may be required under the CBC or any other relevant contract with COE, any other Party (a "*Non-Defaulting Party*") may give written notice to the Defaulting Party that it has elected to exercise its rights under this Section 12(a) (a "*Default Notice*"). Notwithstanding anything to the contrary in this Agreement, in the event that a Party alleges a default by another Party pursuant to Section 12(a)(ii), and the alleged Defaulting

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Party notifies the Non-Defaulting Party that it does not agree that the default claimed in the applicable Default Notice has occurred, or if it has occurred that a reasonable defense thereto exists (such as Force Majeure), then no Default shall be deemed to exist for purposes of this Section 12 unless and until the matter has been finally determined by arbitration in accordance with the dispute resolution provisions of Section 21 hereof.

- (b) If a Default Notice is given pursuant to Section 12(a)(i), then the Non-Defaulting Party may purchase (for itself or any other party that it designates) all but not less than all of the Shares then held by the Defaulting Party at a per-Share price equal to the "*Fair Market Value*" (determined in accordance with Section 13), and if the Default Notice is given pursuant to Clause Section 12(a)(ii) then, subject to the arbitration provisions of Clause (a) above, if applicable, the Non-Defaulting Party may purchase all but not less than all of the Shares then held by the Defaulting Party at a per-Share price of eighty percent (80%) of the Fair Market Value. Any sale of Shares pursuant to this Section 12(a) shall include the loans extended by the Defaulting Shareholder to JVCO.
- (c) The options referred to in Section 12(b) shall be exercisable by the Non-Defaulting Party, provided that such Party is not also in default under this Agreement, upon written notice to the Defaulting Party within sixty (60) days from the issuance of the Default Notice. If any such option is duly exercised, the Parties shall promptly thereafter take whatever action is necessary and sign whatever documents are necessary in order to effectuate the appropriate Share transfer(s). Nothing in this Section 12 shall be construed to require any Non-Defaulting Party to exercise any of the above options, nor shall it deny the Non-Defaulting Party of any other rights or remedies it may have against the Defaulting Party under applicable law, whether or not such options are exercised.
- (d) Upon consummation of the sale and purchase transactions subsequent to exercise of the options referred to in Section 12(b), this Agreement shall terminate immediately and without further action by either Party, and upon such termination:
 - (i) all further rights, privileges, benefits, duties and obligations created hereby shall terminate, other than such duties that expressly survive termination pursuant to this Agreement, provided that neither Party shall be discharged from any obligations or liabilities under this Agreement which were created or incurred prior to the effective date of its termination;
 - (ii) all agreements entered into between the Defaulting Party and JVCO (except accrued but unpaid amounts owed to a Party under the Management Services Agreement, the Technical Services Agreement, the Administrative Services Agreement and any other loan agreements, all of which shall be included in the relevant Share sale) shall terminate immediately and without further action by either Party, and upon such

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termination, all further rights, privileges, benefits, duties and obligations created thereby shall terminate, other than such duties that expressly survive pursuant to the terms thereof, provided that the Defaulting Party shall not be discharged from any prior obligations or liabilities under the same and provided further that all payments due and payable to the Defaulting Party under such agreements prior to termination shall be settled in accordance with the provisions thereof; and

- (iii) the Parties shall cooperate with each other and with JVCO in transferring all Confidential Information and other intellectual property rights belonging to a Party, back to such Party.
- (e) The provisions of Sections 610, 11, 12, 14, 15, and 19 through 32, shall survive the termination of this Agreement pursuant to Section 12(d).
- (f) The rights provided for in this Section 12 shall be in addition to and not in substitution for any other remedies that may be available to any Party which is not in default of its obligations hereunder or by operation of applicable law. The exercise or failure to exercise such rights shall not relieve the Party which is in default of its obligations hereunder from any liability for damages to any Party which is not in default of its obligations hereunder for breach of this Agreement.

13. Fair Market Value

- (a) Where a provision of this Agreement calls for a determination of the "Fair Market Value" of a Party's shareholding, the Fair Market Value shall be the higher of (i) the amount agreed between the Parties, or (ii) the price determined by the Parties (a) making a good faith effort to make such determination in accordance with internationally accepted valuation methods, (b) treating JVCO as a going-concern and (c) taking into account any Loan or guarantee to be transferred together with the relevant Shares (the "*Fair Market Value*").
- (b) In the event that the Parties are unable to agree the Fair Market Value of Shares within fourteen (14) days of either Party requesting so by notice to the other, such Party may request an accounting firm affiliated with one of the following accounting firms: Deloitte & Touche, Ernst & Young, KPMG, and PricewaterhouseCoopers, or the legal successors of any of the foregoing, such firm not being JVCO's auditor or any Party's principal auditors, to determine the same within 30 days as of referral to them. The Fair Market Value of the relevant Shares shall be determined by the said firm as a pro rata proportion of the market value of JVCO as a whole as between a willing seller and a willing buyer contracting at arm's length, without any premium or discount by reference to the percentage of the Shares being transferred or sold.

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14. Term and Termination.

- (a) Unless sooner terminated as provided in Section 12(a) below, the term of this Agreement shall commence on the Effective Date and shall continue through the last day of the Term, as defined below. For purposes of this Agreement, Term means the period commencing on the Effective Date of this Agreement and ending on the date upon which all contracts (including without limitation the CBC) entered into in relation to vocational education colleges as to which COE may grant rights to JVCO, expire or otherwise are terminated (the "Term").
- (b) Either Party shall have the right to terminate this Agreement prior to the expiration of the Term immediately upon the occurrence of any of the following events:
- (i) the breach or default by the other Party of any material term, obligation, covenant, representation or warranty contained in this Agreement, as the same may be amended or modified from time to time during the Term hereof, if the breaching Party shall not cure or obtain a waiver from the non-defaulting Party of such breach or default within ten (10) days from the date it has received a notice of such breach from the non-breaching party, provided that in the case of any breach of the provisions of Section 10 of this Agreement, prior notice shall not be required hereunder; or
 - (ii) the mutual agreement of both Parties; or
 - (iii) by either Party upon thirty (30) days' written notice to the other following the termination or expiration of the CBC.

Notwithstanding anything to the contrary contained in this Agreement, this Agreement may not be terminated by either Party pursuant to Section 14(b)(i), unless (A) at the time of such termination, the terminating Party is not then in default under the Agreement; and (B) in the event that the terminating Party seeks termination for default pursuant to this Section 14, and the alleged Defaulting Party notifies the Non-Defaulting Party that it does not agree that the default claimed in the applicable Default Notice has occurred, or if it has occurred that a reasonable defense thereto exists (such as Force Majeure), then no Default shall be deemed to exist for purposes of this Section 12 unless and until the matter has been finally determined by arbitration in accordance with the dispute resolution provisions of Section 21 hereof.

- (c) Upon termination of this Agreement, neither Party shall be discharged from any prior obligations or liabilities to the other Party under the Agreement unless otherwise agreed in writing by the Parties. All payments due and payable to any Party hereunder upon the effectiveness of any expiration of the Term hereof shall be paid in accordance with the provisions hereof or otherwise as applicable, but immediately upon such termination or expiration, and without further action by either Party, all further rights, privileges, benefits, duties and obligations created

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hereby shall terminate, other than such duties that expressly survive pursuant to this Agreement.

- (d) Upon termination of this Agreement, the Parties shall cooperate with each other and with JVCO in transferring all Confidential Information and other intellectual property rights, including the RSCCDF IP and the Al Khaleej IP, back to the Party that owns such rights, and shall transfer and assign to the Parties, as may then be agreed or otherwise determined, all right, title and interest in and to any JV Rights existing at the time of such termination.

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- (e) The provisions of Sections 66(d) and 6(e); 10; 11; 14(a), (d), (e) and (f); 15; and 19 through 32, shall survive the termination or expiration of this Agreement for any reason.
 - (f) Upon the termination of this Agreement for any reason, the Parties shall ensure, and shall cause JVCO to ensure, that the following actions are timely and correctly taken:
 - (i) JVCO shall be liquidated forthwith and, following payment of all known obligations thereof, and the establishment of a reasonable reserve to pay such true obligations of JVCO as are unknown at the time of its liquidation hereunder, the Parties shall share in the net proceeds therefrom, including without limitation the good will associated therewith, in accordance with their respective percentages of ownership of JVCO; notwithstanding the foregoing, RSCCDF IP and Al Khaleej IP, including any and all Confidential Information belonging to either Party, shall never be deemed upon termination of this Agreement to constitute an asset of JVCO, but rather shall at all times hereunder be and remain the sole and exclusive property of the Party that has provided the same to JVCO in accordance with the applicable provisions of this Agreement; and *[Note: The sale of JVCO or its assets to a third party following expiry or termination of all COE contracts with JVCO (it is only then that this Agreement can logically be terminated) does not seem a realistic option as JVCO would be out of business by then. It goes without saying that, for as long as any COE contract remains in force, this Agreement cannot be terminated and, on top of it, no assignment would logically be tolerated by COE, see clause 29 of the model agreement with COE][Note: (1) See our comments re termination in the event of material breach in Clause 12(a) above; (b) It is conceivable that the Parties may desire to transfer the business to another Training Provider for value, and with the consent of COE; and (c) it is conceivable that at some point the Parties may desire to expand the JV Business beyond its contracts with COE, in which case it may thereafter desire to sell it to another party. In all three instances, the Parties should have the right to assign its assets and liquidate the JV Business for value.]*
 - (ii) The JV Business shall be wound up forthwith and no further contracts for JVCO to provide services shall be accepted by JVCO hereunder.
15. **Indemnification.** Each Party hereby agrees to indemnify and hold harmless the other, together with such Party's officers, directors, partners, shareholders, employees, agents and representatives (collectively, the "*Indemnified Parties*"), from and against any loss, cost, damage, claim, charge, set-off, encumbrance or other obligation or liability (a "*Liability*") resulting from or arising out of any material breach of such Party's duties, obligations or requirements hereunder including, without limitation, any and all claims from third parties against any Indemnified Party as a result thereof (a "*Third-Party*

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Claim”). Such indemnification shall cover, to the greatest extent permitted under applicable law, the right to reimbursement of reasonable attorneys’ fees, expenses and costs of litigation, arbitration, mediation and/or settlement. Payment to the Indemnified Parties, and any of them, shall be made upon notice to the party or parties from whom indemnification may properly be sought hereunder (the “*Indemnifying Party*”) that a Liability has arisen (or, to the extent that notice has been previously delivered, that such Liability is continuing), together with any invoice or other demand for payment to any party, including an attorney defending against or prosecuting the same, and the Indemnifying Party shall promptly furnish payment thereon as directed in such notice.

16. Compliance with this Agreement and the Articles.

- (a) Compliance with this Agreement. Each Party undertakes to the other Party that, for so long as this Agreement remains in effect, it shall use all commercially reasonable efforts to:
 - (i) it shall take all reasonably practicable steps including, without limitation, the exercise of votes it directly or indirectly controls at shareholder meetings to ensure that the terms of this Agreement are complied with,
 - (ii) it shall do all such other acts and things as may be necessary or desirable to implement this Agreement.
- (b) Compliance with the Articles. Each Party undertakes to each other Party to comply fully and promptly with the provisions of the Articles so that each and every provision of the Articles (subject to the following paragraph) shall be enforceable by the Shareholders as between themselves in whatever capacity.
- (c) Conflict with Articles. If and to the extent any provisions of this Agreement conflict with and/or deviate from the Articles and such conflict/deviation would, for reasons of law, not permit the Parties to this Agreement to proceed in accordance with the provisions hereof, then the Parties to this Agreement shall amend the Articles or make such other statements and take such other actions as are necessary to give full effect to the intent of the Parties as expressed through the provisions of this Agreement. Without limiting the generality of the foregoing, the Parties to this Agreement hereby expressly confirm that the provisions of this Agreement (as amended from time to time) shall, as between the Parties, have priority over the Articles.

17. Representations of RSCCDF. RSCCDF hereby represents and warrants to Al Khaleej, as of the Effective Date, as follows:

- (a) RSCCDF is a [corporation] duly organized, validly existing and in good standing under the laws of the State of California, United States of America, and has full corporate power and authority to enter into and perform this Agreement in accordance with its terms.

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- (b) This Agreement has been duly authorized, validly executed and delivered by it, and constitutes the valid and binding agreement of RSCCDF, enforceable against RSCCDF in accordance with their respective terms under applicable law. Each person signing this Agreement on behalf of RSCCDF is the duly authorized representative of RSCCDF, with full authority to execute and deliver this Agreement for and on behalf of RSCCDF.
- (c) By entering into this Agreement, RSCCDF has not violated or caused a default under any other agreements to which it is a party.

18. Representations of Al Khaleej. Al Khaleej hereby represents and warrants to RSCCDF, as of the Effective Date, as follows:

- (a) Al Khaleej is a public joint stock company duly organized, validly existing and in good standing under the laws of the KSA, and has full corporate power and authority to enter into and perform this Agreement in accordance with its terms.
- (b) This Agreement has been duly authorized, validly executed and delivered by it, and constitutes the valid and binding agreement of Al Khaleej, enforceable against Al Khaleej in accordance with their respective terms under applicable law. Each person signing this Agreement on behalf of Al Khaleej is the duly authorized representative of Al Khaleej, with full authority to execute and deliver this Agreement for and on behalf of Al Khaleej.
- (c) By entering into this Agreement, Al Khaleej has not violated or caused a default under any other agreements to which it is a party.

19. Notices. All notices, requests, demands and other communications to be given hereunder shall be in writing and shall be deemed to have been duly given on the date of personal service or transmission by fax if such transmission is received during the normal business hours of the addressee, or on the first business day after sending the same by overnight courier service or by telegram, or on the third business day after mailing the same by first class mail, or on the day of receipt if sent by certified or registered mail, addressed as set forth in the Preamble to this Agreement, or at such other address as any Party may hereafter indicate by notice delivered as set forth in this Section 19.

20. No Partnership. Nothing contained in this Agreement is intended or shall be deemed to constitute a partnership, agency, or employer-employee relationship between the Parties, or their employees, agents, representatives, Affiliates, successors and/or assigns. Neither Party, their respective successors and assigns shall be liable for any debts, liabilities or obligations of the other Party ("*Indebtedness*"), except to the extent, if at all, specifically agreed to in writing by the Parties here in or in a subsequent document signed by each of them. The Parties shall not have the right to extend or to utilize the credit of the other Party, to extend credit in the name of the other Party, or to represent that such Party has been authorized by the other Party to do so without the express written consent of such other Party. In the event that a creditor of a Party shall assert a claim against such Party

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based on such Indebtedness, then the Party who in fact is obligated thereon shall indemnify and hold the other Party harmless from and against any losses, claims or liabilities by reason thereof in accordance with the provisions of Section 7 above.

21. Dispute Resolution.

- (a) Except as specifically excluded under Section 21(b) below, all claims, disputes and other matters in question arising out of or relating to this Agreement shall be finally and exclusively settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules") by one arbitrator appointed in accordance with the said Rules. The Parties hereby agree that, except in such cases where the arbitration results from a claim of Default pursuant to Sections 12 or 14 hereof, no request for arbitration may be served by either Party unless and until either Party has requested by written notice to the other Party the conduct of good faith negotiations to resolve the relevant dispute, and at least thirty (30) days have elapsed from the date of such request without the Parties succeeding in reaching an amicable solution in relation to the same, it being the express intention of the Parties to, as much as possible, avoid litigation as a means of dispute resolution. Claims and disputes subject to arbitration pursuant to this Section 21(a) include, but are not limited to, the following:
- (i) a dispute as to whether a default or violation of this Agreement exists;
 - (ii) a dispute as to whether such default or violation entitles the non-defaulting Party to terminate this Agreement, and/or to other relief as a result thereof;
 - (iii) a dispute as to the validity of this Agreement, or the validity of this Section 21(a);
 - (iv) a dispute relating to the construction, meaning, interpretation, application or effect of this Agreement or anything contained herein; and
 - (v) a dispute as to the rights, obligations or liabilities of the Parties hereunder.
- (b) Notwithstanding anything to the contrary set forth in this Agreement, arbitration may not be invoked to compel any Party to accept any matter required to be agreed upon by, or to be determined with the consent or approval of, such Party pursuant to this Agreement or otherwise as set forth in a signed document.
- (c) Arbitration may not be invoked in connection with any dispute alleging, arising out of or resulting from any Party's violation of the provisions of Section 10, or otherwise challenging or affecting the ownership of either Party to any other right or interest it may have (including, without limitation, such Party's interest in its name, image, business reputation and the like), or where the actions of the defaulting Party must be enjoined in order to protect any of such rights or interests.

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- (d) All arbitration proceedings permitted to be conducted pursuant to this Section 12 shall be conducted in the English language and shall proceed before a single arbitrator chosen for such purpose by the Parties, at such location within the City of London, United Kingdom, as the Parties may mutually agree, in accordance with the Commercial Arbitration Rules of the International Chamber of Commerce as then in effect (the "*Rules*"). In the event that the Parties are unable to agree upon a single arbitrator, then they hereby agree to request that one be designated by the International Chamber of Commerce in accordance with the Rules. In any proceeding in arbitration pursuant to this Section 12, the Parties hereby agree that the arbitrator shall be directed to follow rules of civil procedure, rules of evidence and burdens of proof and persuasion, as applicable, in the adjudication of disputed claims and cross-claims hereunder in the same manner as if such claims or cross-claims were being adjudicated in a court of competent jurisdiction, it being understood that the intent of the Parties in choosing arbitration as an alternative method of dispute resolution is solely to expedite the resolution of disputes subject to arbitration, and not to alter the procedural rights and obligations of the Parties nor the application of substantive legal theories and principles to the matters being adjudicated.
- (e) All arbitration proceedings permitted to be conducted pursuant to this Section 12 shall be conducted in the English language and shall proceed before a single arbitrator chosen for such purpose by the Parties, at such location within the City of London, United Kingdom, as the Parties may mutually agree, [in accordance with the Commercial Arbitration Rules of the International Chamber of Commerce as then in effect (the "*Rules*"). In the event that the Parties are unable to agree upon a single arbitrator, then they hereby agree to request that one be designated by the International Chamber of Commerce in accordance with the Rules. In any proceeding in arbitration pursuant to this Section 12, the Parties hereby agree that the arbitrator shall be directed to follow rules of civil procedure, rules of evidence and burdens of proof and persuasion, as applicable, in the adjudication of disputed claims and cross-claims hereunder in the same manner as if such claims or cross-claims were being adjudicated in a court of competent jurisdiction, it being understood that the intent of the Parties in choosing arbitration as an alternative method of dispute resolution is solely to expedite the resolution of disputes subject to arbitration, and not to alter the procedural rights and obligations of the Parties nor the application of substantive legal theories and principles to the matters being adjudicated.][Open Issue: ICC Arbitration vs UK national arbitration]
- (e) Each decision rendered by the arbitrator in respect of an issue submitted to arbitration shall be final and binding upon the Parties hereto, and shall be enforceable by any court of competent jurisdiction upon an entry of judgment by such court in accordance with applicable law; no appeal of the decision of the arbitrator may be brought in any court. The Parties intend and hereby agree that all decisions of the arbitrator under this Section 21 shall be fully enforceable as a

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foreign arbitral award by any court of competent jurisdiction in the United States of America and in the Kingdom of Saudi Arabia, as applicable.

- (f) In no event shall either Party to an arbitration convened hereunder be entitled to an award of exemplary, consequential, special or punitive damages as a part of the arbitral award.
22. **Benefit of Parties.** All of the terms and provisions of this Agreement shall be binding upon the Parties executing the same and their respective permitted successors and assigns. Except as expressly provided herein, a Party may not assign its rights and obligations to a third party without the prior written consent of the other Parties, provided, however, that a Party may, in its sole discretion, assign its rights to receive fees and distributions from JVCO to one or more of its Affiliates;
23. **Counterparts; Facsimiles and Scans.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimiles and electronic scans containing original signatures shall be deemed for all purposes to be originally-signed copies of the documents which are the subject of such facsimiles or scans.
24. **Further Assurances of Cooperation.** During the Term of this Agreement, each of the Parties hereto shall do all things and execute all documents reasonably necessary or desirable in order to carry out the purposes and intents of this Agreement, and shall fully cooperate with each other and with JVCO in all respects in good faith to ensure that the Joint Venture operates in the manner contemplated herein and achieves all of its stated objectives.
25. **Index, Captions, Definitions and Defined Terms.** The captions of the Articles and Sections of this Agreement and subsections thereof are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provisions hereof. Notwithstanding the foregoing, the Definitions set forth in Article 1 hereof, together with any other defined terms in this Agreement, as identified by their insertion in parentheses and quotation marks ("*Defined Terms*"), shall be incorporated herein as written, made a part hereof, and govern the interpretation of the text of this Agreement, irrespective of whether such Definitions or Defined Terms appear in the text of this Agreement before or after they are defined.
26. **Non-Waiver of Rights.** The failure of any Party to enforce at any time any of the provisions hereof shall not be deemed or construed to be a waiver of any such provisions or a waiver of the right of such Party thereafter to enforce any such provisions. No waiver by a Party of any right hereunder shall be deemed a waiver of any other right, and no such waiver shall be binding unless executed in writing by the Party making the waiver.
27. **Force Majeure.** In the event that a Party is prevented or delayed from performing, fulfilling or completing any obligation provided for in this Agreement as a result of

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delays caused by labor strikes, lock-outs, unavailability of materials, acts of God, acts of any national, state or local governmental agency or authority of a foreign government, war, terrorism, insurrection, rebellion, riot, civil disorder, fire, explosion or the elements (each, a "*Force Majeure Event*"), then the time for performance, fulfillment or completion shall be extended for a period not exceeding the number of days by which the same was so delayed. If a Force Majeure Event shall be in existence for one year or more, then any Party shall have the right to terminate this Agreement at any time thereafter by giving the other Party at least thirty (30) days written notice of termination to the other Party, provided that the Force Majeure Event continues to be in effect as of the date that such notice is given.

28. **Entire Agreement.** This Agreement, including all Exhibits hereto, contains the entire understanding of the Parties as of the Effective Date. There are no representations, promises, warranties, covenants, agreements or undertakings other than those expressly set forth herein or therein, as applicable, or provided for in this Agreement or in such Exhibits, and the same supersede all prior agreements and understandings between the Parties with respect to the relationships and transactions contemplated by this Agreement. It is the intent of the Parties to develop the relationship established hereunder, and the Parties may amend and supplement this Agreement so as to provide for expansion of the scope of the JV Business as the Parties may hereafter mutually agree. Any amendment or supplement to this Agreement must, however, be clearly identified as such and set forth in writing ("*Supplemental Documents*"). Supplemental Documents may include corporate resolutions and/or other written exchanges between the Parties, but must be manually signed, in the original, by duly authorized representatives of the Parties to constitute valid Supplemental Documents for purposes hereof. In case of a conflict between the terms of this Agreement and the terms of any other agreement or Supplemental Document entered into between the Parties, the terms of this Agreement shall prevail unless expressly stated otherwise in such subsequent agreement or document.
29. **Validity of Provisions.** Should any part of this Agreement be declared by any court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions, which remaining portions shall continue in full force and effect as if such instrument had been executed with the invalid portion thereof eliminated therefrom, it being the intent of the Parties that they would have executed the remaining portions without including any such part or portion which may for any reason be declared invalid. In the event that a provision of this Agreement shall be declared to be invalid, then the Parties agree that they shall, in good faith, negotiate with one another to replace such invalid provision with a valid provision as similar as possible to that which had been held to be invalid, giving due recognition to the reason for which such provision had been held invalid.
30. **Payments.** Any payment to be made to any Party pursuant to any provision of this Agreement shall be made by means of a wire transfer or by means of a deposit to a bona fide bank account as designated by such Party. The Parties shall each have the right to

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specify in writing any bank account to which payments due them (respectively) shall be made.

31. Specific Performance; Remedies Cumulative. The parties hereby agree that, in the event of any breach of this Agreement by the other Party, where such breach may cause irreparable harm to the non-breaching Party, or where monetary damages may not be sufficient or may not be adequately quantified, then, notwithstanding the provisions of Section 21 hereof, the affected party or parties shall be entitled to seek from any court of competent jurisdiction specific performance, injunctive relief or such other equitable remedies as may be available to it, which remedies shall be cumulative and non-exclusive, and in addition to such other remedies as such party may otherwise have at law or in equity.

32. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of [England and Wales] [the State of California, United States of America], without giving effect to the law of conflicts of laws applied thereby [**Open issue: which law will govern the contract – UK vs. Cal, US**].

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

<p>RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT FOUNDATION</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>AL KHALEEF TRAINING AND EDUCATION CORPORATION:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
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