

**AGREEMENT BETWEEN  
TEXAS STATE UNIVERSITY  
AND  
[PROVIDER'S NAME]**

This Agreement is made by and between Texas State University (“Texas State” or “University”), a member of The Texas State University System (“TSUS”), an agency of the State of Texas, with a business address of 601 University Drive, San Marcos, Texas 78666, and [Provider’s name] (“Provider”), an independent service provider, with a business address of [Provider’s address].

The purpose of this Agreement is to outline the terms and conditions for customized education abroad programs that Texas State and Provider may conduct. The specific services and individual program details for each program will be outlined in a separate appendix in accordance with the terms of this Agreement. This Agreement shall not be construed as an obligation to Provider to develop education abroad programming for Texas State.

In consideration of the mutual promises and covenants contained in the Agreement, Texas State and Provider agree as follows:

**1. DEFINITIONS**

- 1.1. The “Program” refers to any and all services that Provider provides the participant.
- 1.2. The “Participant” refers to Texas State students and faculty who use Provider services.
- 1.3. Provider and Texas State are each a “Party” and together are “Parties” to this Agreement.
- 1.4. The “Appendix” refers to documents outlining the details of an individual program to include, but not limited to, services provided by Provider and costs paid by Texas State.

**2. STATEMENT OF WORK**

Texas State hereby engages Provider to assist in the development and administration of education abroad programs upon the terms and conditions provided in this Agreement. The education abroad programs to be conducted pursuant to this Agreement will be developed in coordination with the Education Abroad Office at Texas State. The details of the program including the number of students and faculty participants, program dates, cost per student, payment schedule, and cancellation terms will be determined by mutual written agreement between Texas State and Provider in a separate Appendix. Once a program has started, any itinerary changes must be approved by Texas State. Each program is subject to, and will not contain any terms serving to modify, the terms and conditions of this Agreement. Texas State agrees to make all reasonable efforts to meet minimum enrollment numbers for the different programs developed by Provider.

**3. TERM OF AGREEMENT**

This Agreement shall begin on [date] and shall expire on [date], unless terminated earlier in accordance with this Agreement (the “Term”). The Term may be amended by mutual written and signed agreement.

#### **4. AUTHORIZED CONTRACT SUM**

- 4.1. Contract Sum: Allowable fees for each specifically authorized Program will be established per individual Appendices. Invoices for authorized work performed by Provider shall not exceed the fees established for any portion of authorized work. Established fee amounts shall not be increased except by written amendment to a previously issued Appendix signed by both Parties.
- 4.2. No Minimum Amount of Work: Texas State makes no representations regarding the amount or type of services, if any, that Provider will be asked to provide to Texas State during the Term of this Agreement. It is expressly understood that Texas State is under no obligation to request services from Provider and no minimum amount of work is required or contemplated under this Agreement. All Appendices will be made by Texas State on an as-needed basis, subject to future agreement on the scope of the work and the fee.
- 4.3. Contract Limits: This contract may not reach or exceed [dollar amount] for the term of the Agreement.

#### **5. PRICES AND PAYMENT TERMS**

- 5.1. All payments under this Agreement shall be due as detailed in each Appendix and payment in full will be due to Provider prior to the Participants' arrival. Provider will make the Appendix available to Texas State as early as possible from the proposed Program start date.
- 5.2. Payment shall be made in accordance with the "Prompt Payment" provision of Texas Government Code Section 2251. Provider will send invoices to the Texas State Education Abroad Office no later than five (5) weeks before payment is due. Invoices and payments will be calculated in U.S. dollars.
- 5.3. The cost for individual Programs shall be set forth in the Program's Appendix and Provider shall not increase the prices or change the schedule of program activities or materially reduce the kind or quality of program goods and services as outlined and agreed upon in each Appendix without Texas State's prior written consent.
- 5.4. University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax in accordance with Section 151.309 of the Texas Tax Code and Section 3.322 of Title 34 of the Texas Administrative Code.
- 5.5. When a faculty member accompanies Participants on a Program developed by Provider, the faculty member's costs (e.g., entry fees, transportation, hotel, meals for included dinners) to participate in all activities that Provider will organize on behalf of Texas State shall be included in the cost per student.

#### **6. FINANCIAL RESOURCES**

Provider shall ensure that there are adequate financial resources to perform the type, magnitude, and quality of work specified in the Program proposal. Upon Texas State's written request, Provider shall demonstrate adequacy of financial resources or ability to obtain required resources.

## **7. PROGRAM CANCELLATION POLICY**

- 7.1 Provider will outline a cancellation schedule and refund policy for each Program in the Program Appendix. Notice of cancellation must be received by Provider in writing on or before the cancellation date specified in the Appendix. Any refunds to Texas State will be made within thirty (30) business days from the Program cancellation date. Provider shall absorb any exchange or transfer fees.
- 7.2 In the event Provider cancels a Program for any reason and is not able to provide an alternative Program acceptable to Texas State, Provider shall, within thirty (30) business days after cancellation of the Program, refund to Texas State one hundred percent (100%) of all payments made toward the Program.
- 7.3 No refund will be required in the event of a cancellation due to a force majeure event as defined below. Both Parties agree to negotiate in good faith for all cancellations due to a force majeure event.

## **8. DEFAULT AND TERMINATION**

- 8.1. If either Party substantially fails to perform in accordance with the terms of this Agreement, the other Party may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure. The termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period.
- 8.2. University may terminate this Agreement at any time, without cause, upon giving fifteen (15) days advance notice to Provider. Upon termination pursuant to this section, Provider will receive payment for services performed up to the date of the notice of termination, provided Provider shall have delivered to University a final report describing the work completed up to the date of termination. University shall not reimburse Provider for any services performed or expenses incurred after the date of the notice of termination.

## **9. DISPUTE RESOLUTION**

The Parties shall use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve any claim for breach of contract made by Provider.

## **10. INDEMNIFICATION**

PROVIDER WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY TEXAS STATE, AND HOLD HARMLESS TEXAS STATE, TSUS AND THEIR REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM THIS AGREEMENT OR THE SERVICES PROVIDED UNDER THIS AGREEMENT, TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE ACTS, OMISSIONS, OR WILLFUL MISCONDUCT OF PROVIDER, OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS,

SUPPLIERS OR ANYONE DIRECTLY EMPLOYED BY PROVIDER OR ANYONE FOR WHOSE ACTS PROVIDER MAY BE LIABLE. IN ADDITION, PROVIDER WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS AGREEMENT OR THE GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT, WHICH ANY INDEMNITEE HAS, BY LAW OR EQUITY. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO COOPERATE REASONABLY WITH PROVIDER. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

#### **11. INSURANCE**

Provider will maintain in effect during the period of this Agreement general liability insurance and any employee compensation insurance as may be required by the laws of the country in which Provider is organized. The policies shall be primary and name Texas State and TSUS, their Regents, and employees as additional insureds. The additional insured status must cover completed operations as well.

#### **12. TRAINING AND SAFETY**

Provider certifies that it and its employees have the background, training, and experience and necessary licenses to properly and professionally perform the services being delivered under this Agreement. Provider acknowledges that Texas State, in entering into this Agreement, reasonably expects Provider to be aware of all applicable safety standards and necessary safety procedures and practices to be able to perform the services to be delivered under this Agreement without injury to TSUS, Texas State, and their respective regents, employees, Participants, and any third parties.

#### **13. FORCE MAJEURE**

Except as otherwise provided, neither Provider nor Texas State shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this Agreement caused by Force Majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing Party exercises all reasonable due diligence to perform. "Force Majeure" is defined as acts of God, war, strike, fires, explosions, pandemics and epidemics, or other causes that are beyond the reasonable control of either Party and that by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such Party is unable to overcome.

#### **14. INDEPENDENT CONTRACTOR**

Provider shall operate as an independent contractor and neither Provider nor any employee of the Provider shall be deemed an agent or employee of University. Provider is solely responsible for determining the means and methods for performing services described in this Agreement.

**15. ASSIGNMENT AND SUBCONTRACTING**

Provider’s duties and obligations under this Agreement and the fees due to the Provider under this Agreement may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part. Provider’s duties and obligations under this Agreement do not include the use of subcontractors for things like buses, train travel, hotels, etc. except as otherwise noted in the Program Appendix. Any attempt by Provider to assign or subcontract its duties and obligations under this Agreement (a) will not be binding on University; and (b) may be a breach of this Agreement. The benefits and burdens of this Agreement are assignable by Texas State.

**16. SEVERABILITY**

In case any provision of this Agreement, for any reason, is held invalid or unenforceable in any respect, the invalidity or unenforceability of that provision will not affect any other provision of this Agreement and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

**17. VENUE AND GOVERNING LAW**

Travis County, Texas will be the proper place of venue for suit on or in respect to this Agreement. This Agreement and all of the rights and obligations of the Parties will be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas. Nothing in this Agreement or any attachments shall be construed as a waiver of the constitutional, statutory, or common-law rights, privileges, immunities or defenses of the Parties. To the extent the terms of this section conflict with any other provision in this Agreement, the terms of this section shall control.

**18. REPRESENTATION AND WARRANTIES**

Provider warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state and/or country of its incorporation or organization and is duly authorized and in good standing to conduct business with the State of Texas; that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement; and the individual executing this Agreement on behalf of Provider has been duly authorized to act for and bind Provider.

**19. LIMITATIONS**

PROVIDER IS AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF TEXAS STATE (AN AGENCY OF THE STATE OF TEXAS) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS, AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS’ FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE “LIMITATIONS”). ANY TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL

NOT BE BINDING ON TEXAS STATE EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

**20. ENTIRE AGREEMENT; MODIFICATIONS**

This Agreement supersedes all prior agreements, written or oral, between Provider and Texas State and will constitute the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the Parties and may not be waived, modified, amended or altered except in writing and signed by Texas State and Provider.

**21. COMPLIANCE WITH APPLICABLE LAWS**

21.1. Both Parties and their agents shall comply with all applicable federal, state and local laws. Furthermore, Provider and its subcontractors and agents shall comply with all applicable international laws, codes and regulations of the countries and localities in which services are provided, including but not limited to, requirements relative to health and safety, permits and licensing of vehicles and drivers, vessels and crews.

21.2. In accordance with Texas Education Code, Section 51.9335(h), any agreement for the acquisition of goods and services to which an institution of higher education is a party, any provision required by applicable law to be included in the Agreement is considered to be a part of the executed agreement without regard to

- (a) whether the provision appears on the face of the Agreement; or
- (b) whether the Agreement includes any provision to the contrary.

**22. NO BOYCOTT**

Pursuant to Section 2270.002 of the Texas Government Code, Provider certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of this Agreement. Provider shall state in this Agreement any facts that make it exempt from the boycott certification.

**23. NONDISCRIMINATION**

In their execution of this Agreement, the Parties shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the Parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of this Agreement.

**24. PUBLIC INFORMATION**

Texas State strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to the disclosure of public information under the Texas Public Information Act, Chapter 552, Texas Government Code. Provider is required to make any information created or exchanged with Texas State pursuant to this Agreement that is not otherwise excepted from disclosure under the Texas Public Information Act available in a format that is accessible by the public at no additional charge to the state. The following format(s) shall be deemed to be in compliance with this provision: electronic files in Word, PDF, or similar generally accessible format.

## **25. PRESS RELEASES**

Except when otherwise permitted pursuant to a Program Appendix, Provider will not make any press releases, public statements, or advertisements referring to Texas State's engagement of Provider as an independent contractor in connection with the services to be provided under this Agreement or release any information regarding the same for publication, advertisement or any other purpose without Texas State's prior written approval.

## **26. USE OF TEXAS STATE UNIVERSITY NAME, LOGO AND TRADEMARKS**

Texas State is the sole owner of its name, logo, and trademarks (collectively, "Texas State Marks") and has the right of exclusive use and control. Neither Provider nor any of its employees or agents shall use Texas State Marks without Texas State's prior written approval.

## **27. ETHICS PROVISION**

Sections 2261.251(a) and 2261.252 of the Texas Government Code require an initial determination that no TSUS Regent, the Chancellor, Vice Chancellor and General Counsel, the University President or Director of Procurement has a 1% interest (or other interest prohibited by law) in Provider or any affiliated company. The Parties assert that this Agreement complies with Section 225.908 of the Texas Government Code, which requires a business entity to submit a Disclosure of Interested Parties (Disclosure), as prescribed by the Texas Ethics Commission, to the government entity (University) at the time the signed contract (or amendment) is submitted. Within 30 days after the Disclosure is filed, University will file a copy of the Disclosure with the Texas Ethics Commission.

## **28. LOSS OF FUNDING**

Performance by Texas State under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the TSUS Board of Regents of (the "Board"). If the Legislature fails to appropriate or allot the necessary funds or the Board fails to allocate the necessary funds, then Texas State will issue written notice to Provider regarding the same and Texas State may terminate this Agreement without further duty or obligation. Provider acknowledges that appropriation, allotment, and allocation of funds are beyond Texas State's control. Any expenses incurred by Provider up to the date of Texas State's written notice shall be reimbursed in accordance with this Agreement and the Prompt Payment Act.

## **29. STATE AUDITOR'S OFFICE**

Provider understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the State of Texas Auditor's Office or any successor agency ("Auditor") to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), Texas Education Code. Provider agrees to cooperate with any authorized agents of the State of Texas and provide them with prompt access to any documents related to the Parties' relationship. Provider's failure to comply with this requirement shall constitute a material breach of this Agreement.

## **30. RIGHT TO AUDIT**

Provider agrees that Texas State or any of its duly authorized representatives at any time during the term of this Agreement will have access to and the right to audit and examine any pertinent books, documents, papers, and records of Provider and related Provider's charges incurred in its

performance under this Agreement. Such records will be kept by Provider for a period of four years after final payment made under this Agreement. Provider agrees to refund to Texas State within thirty days of being notified by Texas of any overpayments disclosed by any audits.

**31. NOTICES**

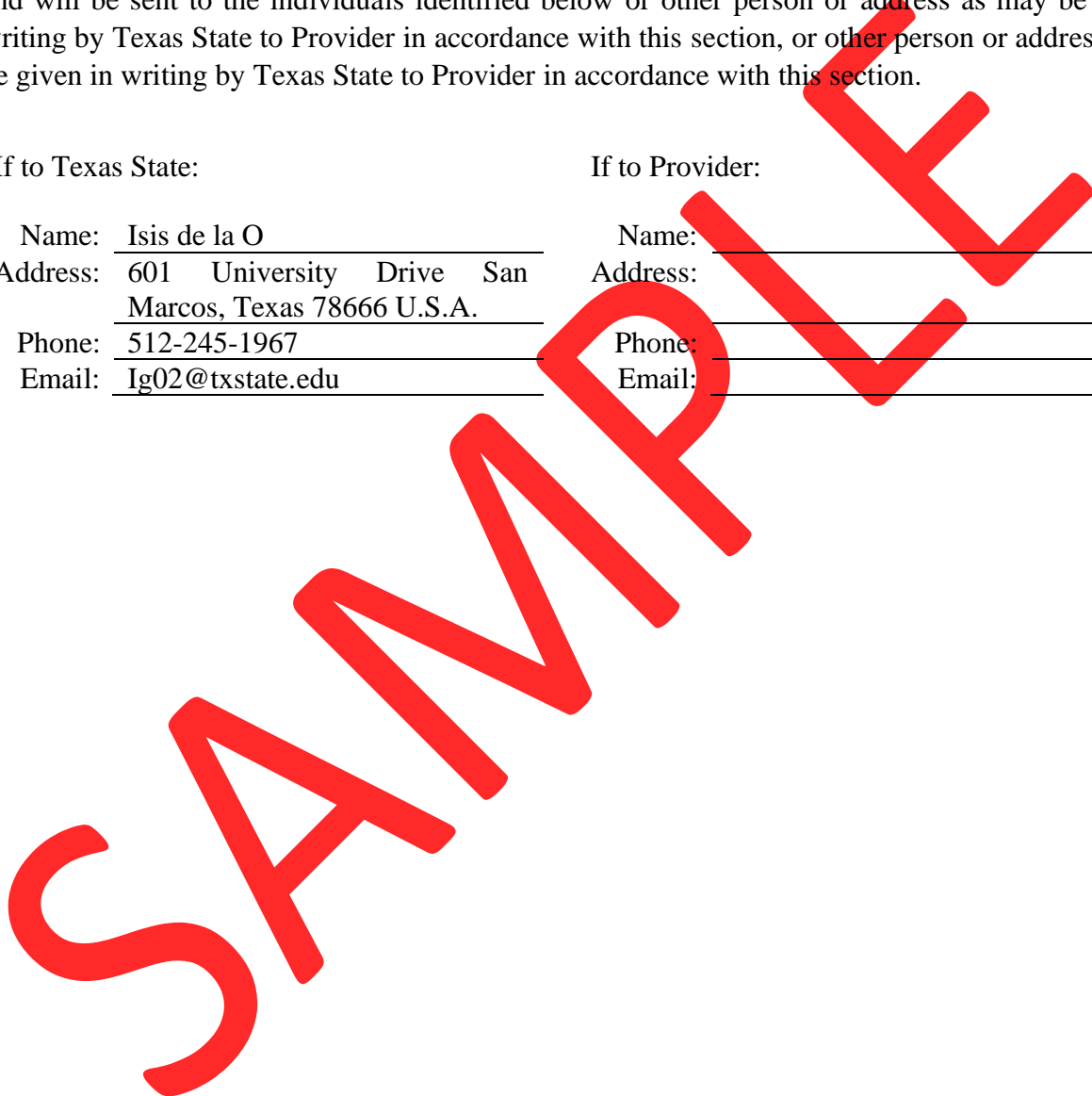
Except as otherwise provided in this section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under this Agreement will be in writing and will be sent to the individuals identified below or other person or address as may be given in writing by Texas State to Provider in accordance with this section, or other person or address as may be given in writing by Texas State to Provider in accordance with this section.

If to Texas State:

Name: Isis de la O  
Address: 601 University Drive San Marcos, Texas 78666 U.S.A.  
Phone: 512-245-1967  
Email: Ig02@txstate.edu

If to Provider:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_





IN WITNESS WHEREOF, this Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes any and all prior negotiations, promises, commitments, undertakings, and agreements of the Parties relating thereto. Duly authorized representatives of Texas State and Provider have executed and delivered this Agreement effective as of the date of the last signature below.

PROVIDER

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

TEXAS STATE UNIVERSITY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**SAMPLE**