

**STATE OF TEXAS**  
**ESCROW AGREEMENT OF SCHOOL AUTHORIZED TO CONFER**  
**DEGREES UNDER A CERTIFICATE OF AUTHORITY**

This Escrow Agreement (the "Agreement") is made effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the Texas Higher Education Coordinating Board (hereinafter referred to as "THECB" or the "Board") with its principal place of business located at 1200 E. Anderson Lane, Austin, Texas 78752, and \_\_\_\_\_ Bank, (hereinafter referred to as the "Escrow Agent") with a bank located at \_\_\_\_\_, which is within Travis County, Texas, and Applicant Institution, \_\_\_\_\_ (hereinafter referred to as "School") with its principal place of business located at \_\_\_\_\_.

**I. RECITALS**

**WHEREAS**, the School has applied or will apply to the Board for a Certificate of Authority to confer degrees in Texas located at \_\_\_\_\_ and has agreed to provide education services in compliance with Texas Administrative Code, Title 19, Part I, Chapter 7, Subchapter A, Rule 7.8, all Texas state law, and any other applicable rules adopted by THECB; and

**WHEREAS**, the Board, to protect the institution's students, has requested that the School place funds in escrow to be released, as provided in Texas Administrative Code, Title 19, Part I, Chapter 7, Subchapter A, Rule 7.8(1)(B), to the Board for use by the Board upon the occurrence of certain events as set forth herein. For purposes of this agreement, a Texas student or enrollee is defined as either a student residing in Texas and enrolled in classes at any site of the School above, or a student residing outside of the State of Texas, but enrolled in classes at the School's Texas site.

**WHEREAS**, the Board has the authority to determine if any student or enrollee of the Institution or his/her parent or guardian has suffered a loss of tuition or any fees as a result of violation of any minimum standard or as a result of the Institution ceasing operation. Any student or enrollee of the Institution or his/her parent or guardian determined by THECB to have suffered a loss of tuition or any fees as a result of violation of any minimum standard or as a result of the Institution ceasing operation may apply to THECB for reimbursement of the amount of unearned tuition and fees.

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

**II. RESPONSIBILITIES AND LIABILITIES OF ESCROW AGENT**

2.1 Escrow Agent is hereby appointed and accepts appointment to act as Escrow Agent under this Agreement.

- 2.2 Escrow Agent is required to be a federally insured bank with authority to operate in the State of Texas.
- 2.3 The acceptance by the Escrow Agent of its duties hereunder is subject to the following terms and conditions, which the parties to this Agreement hereby shall govern and control with respect to the Escrow Agent's rights, duties, liabilities and immunities.
- 2.4 The Escrow Agent shall be protected in acting upon written instructions from the Board or the School if it, in good faith, believes such written instructions to be genuine and what they purport to be. The executors of this Agreement, listed in Section IX.9.1, or their successors, constitute the individuals for each party to this Agreement with full signatory authority to act on behalf of each respective party. This list shall constitute conclusive evidence of the authority of the signatories designated therein to act. The list shall be considered in full force and effect with the Escrow Agent fully protected in acting in reliance thereon, unless and until it receives written notice to the contrary.
- 2.5 The Escrow Agent shall not be liable for any error of judgment or for any action taken or omitted by it in good faith, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection herewith except its own gross negligence or willful misconduct.
- 2.6 The School agrees to indemnify the Escrow Agent and hold it harmless from and against any loss, liability, expenses (including reasonable attorneys' fees and expenses), claim or demand arising out of or in connection with the performance of its obligations in accordance with the provisions of this Escrow Agreement, except for the gross negligence or willful misconduct of the Escrow Agent. These indemnities shall survive the resignation of the Escrow Agent or the termination of the Escrow Agreement.
- 2.7 The Escrow Agent may resign at any time by giving 30 days written notice of such resignation to the School. If no successor Escrow Agent has been named at the expiration of the 30 day period, the Escrow Agent shall have no further obligation hereunder, except to hold the Escrow Funds as a depository. Upon notification by the School of the appointment of the successor, the Escrow Agent shall terminate, and it shall be released and discharged from all further obligations hereunder. In such event, the Escrow Agent shall be entitled to rely on instruction from the School as to the disposition and delivery of the Escrow Fund to the successor escrow agent.

### **III. DEPOSIT OF ESCROW**

- 3.1 Following the execution of this Agreement and the payment of all setup and deposit fees to the Escrow Agent by the School, the Escrow Agent shall open an interest bearing Deposit Account for the School. The opening of the account means that the Escrow Agent shall establish an account ledger in the name of the School and that the School shall receive renewal notices as provided in this Agreement.
- 3.2 Upon execution of this Escrow Agreement, the School shall deliver to the Escrow Agent to be placed in escrow hereunder the amount of \$\_\_\_\_\_, as required pursuant to

Texas Administrative Code, Title 19, Part I, Chapter 7, Subchapter A, Rule 7.8(1)(B) to demonstrate the School is financially sound and capable of fulfilling its commitments to students. The amount of the bond or other allowable surety instrument submitted to the Board with an application for a Certificate of Authority shall be equal to or greater than the cost of providing a refund, including administrative costs associated with processing claims, for the maximum prepaid, unearned tuition and fees of the School for a period or term during the applicable school year for which programs of instruction are offered, including, but not limited to, on a semester, quarter, monthly, or class basis; except that the period or term of greatest duration and expense shall be utilized for this computation where the school year consists of one or more such periods or terms. The escrow amount includes THECB administrative costs associated with processing claims. Escrow Agent shall have no duty to determine the correct amount to be placed in escrow subsequent to the original deposit in the escrow account.

- 3.3 During the term of this Agreement, the Escrow Agent shall provide both the School and the Board with monthly statements containing the beginning balance in the Escrow Account, as well as all principal and income transactions for the statement period.
- 3.4 All interest accrued in the Escrow Account shall be for the account of the School and shall be reported under applicable federal regulations using the tax identification number of the School, which is #\_\_\_\_\_.
- 3.5 The Escrow Funds may not be moved or otherwise withdrawn from the Escrow Account, except as provided herein. If Escrow Funds are withdrawn in violation of this agreement, the School shall reimburse the amount withdrawn in full immediately within fifteen (15) days. Or, upon the passage of fifteen days, the Board shall terminate the agreement thereafter, and collect the Escrow Funds still remaining in the Escrow Account in accordance with Section V.5.1.

#### **IV. FEES**

- 4.1 Any fees and expenses of the Escrow Agent in connection with its duties hereunder shall be paid by the School in accordance with the standard schedule of charges in effect when services are rendered. Such schedule will be furnished upon request.
- 4.2 All escrow service fees as stipulated herein will be due in full at the time of the request for service. In the event of annual renewal fees, the effective date of this Agreement will be the anniversary date.

#### **V. RELEASE AND DELIVERY OF ESCROW FUNDS**

- 5.1 During the term of this Agreement, except for resignation of the Escrow Agent, only the Board may direct withdrawal of the Escrow Funds. Any request from the Board shall state:

“We hereby request payment of the sum of \$\_\_\_\_\_ to the Texas Higher Education Coordinating Board for the following reason(s):

- a. School ceased to exist; [or]
- b. School is unable to support and operate its Texas location at \_\_\_\_\_; [or]
- c. School is in violation of minimum standard(s) for a Certificate of Authority; [or]
- d. School owners/administration is unable to maintain sufficient funds in the Escrow Account, such that the School cannot fully satisfy its obligations under this Agreement.”

The request shall be signed by the Board’s representative who is a signatory hereto, or his/her successor and shall be delivered to Escrow Agent by United States Postal Service certified mail, return receipt requested or courier.

- 5.2 If the Board determines any student or enrollee of the Institution or his/her parent or guardian has suffered a loss of tuition or any fees as a result of violation of any minimum standard or as a result of the Institution ceasing operation, THECB may require the Escrow Agent to reimburse such tuition or fees to the student, enrollee, parent or guardian.
- 5.3 Ten (10) days following the termination date of this Agreement, or any extension of this Agreement, or upon written notice from the Agency, Escrow Agent may pay the Escrow Funds to the School.

**VI. TERM**

- 6.1 The purpose of this Escrow Agreement and the terms hereof shall terminate on the earlier of two (2) years from the date of execution, or upon the happening of any event contemplated in Section V.5.1 of this Agreement. This Agreement may be renewable upon mutual agreement of all parties. If the School defaults on any provision of the Agreement, the School shall forfeit all rights to renegotiate or renew this Agreement with the Board.

**VII. NOTICES**

- 7.1 All instructions, notices and other communications to the Board, the School or the Escrow Agent, required or permitted hereunder shall be given in writing and shall be deemed effectively given upon delivery by certified mail, return receipt requested, or if delivered by hand.

(a) If to the Board, to Rex Peebles, Assistant Commissioner, Academic Quality & Workforce, or his successor.

(b) If to the School, to \_\_\_\_\_.  
Name/Title

(c) If to the Escrow Agent, to \_\_\_\_\_.  
Name/Title

7.2 Any party may change its respective address by ten (10) days' written notice given to the other parties in the manner set forth in this Section.

### **VIII. MISCELLANEOUS**

8.1 The Escrow Agent may act in reliance upon any written instructions; instrument or signature believed to be genuine and may assume that any person giving any written notice, request, advice or instruction in connection with or relating to this Agreement has been duly authorized to do so. The Escrow Agent is not responsible for failure to fulfill its obligations under this Agreement due to causes beyond its control.

8.2 This Agreement is subject to the laws of the State of Texas, which will control in the event of a conflict of laws. Any legal actions arising out of or because of this Agreement shall be brought in courts having jurisdiction in Travis County, Texas, regardless of where the parties are geographically located.

8.3 This Agreement constitutes the entire Agreement between the parties concerning the subject matter hereof, and will supersede all previous communications, representatives, understandings and agreements, either oral or written, between the parties.

8.4 This Agreement may not be amended or supplemented and no provision hereof may be modified or waived, except by an instrument in writing, signed by all of the parties to this Agreement.

8.5 If any provision of this Agreement is held by any court to be invalid or unenforceable, that provision will be severed from this Agreement and any remaining provisions will continue in full force.

8.6 This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns. This Agreement may be amended or modified at any time, or from time to time only in writing executed by all the parties hereto.

### **IX. EXECUTION**

9.1 This agreement may be executed in several counterparts, each of which shall be deemed original, but such counterparts together shall constitute one and the same instrument. The effective date of this Agreement shall be the date it is executed by the last party to do so.

**IN WITNESS THEREOF**, the parties hereto have duly executed this Agreement as of the date first below written.

**BOARD:**                    **Texas Higher Education Coordinating Board**

By:  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SCHOOL:** \_\_\_\_\_

By:  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ESCROW AGENT:** \_\_\_\_\_

By:  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SEND ESCROW AGREEMENT TO:  
Texas Higher Education Coordinating Board  
PO Box 12788  
Austin, TX 78711-2788  
Telephone: (512) 427-6101**