

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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The City of New York and Peter A. Hatch, as : Index No. 452025/2018  
Commissioner of the New York City Department of :  
Consumer and Worker Protection, : (Hon. Sabrina Kraus, J.S.C.)  
:  
Plaintiffs, :  
:  
-against- : **SETTLEMENT AGREEMENT**  
:  
Berkeley Educational Services of New York, Inc., : **AND ASSURANCE OF**  
:  
Defendant. : **COMPLIANCE**  
:  
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This Settlement Agreement and Assurance of Compliance (“Settlement Agreement”) is made and entered into as of January 11, 2022 by and among The City of New York and Peter A. Hatch, as Commissioner of the New York City Department of Consumer and Worker Protection (“**Plaintiffs**”) and Berkeley Educational Services of New York, Inc. (“**Defendant**” or “**Berkeley**”). Each shall be referred to individually as a “**Party**” and collectively as “**Parties**.”

**I. INTRODUCTION:**

1. Peter A. Hatch is the Commissioner of the New York City Department of Consumer and Worker Protection, an agency of the City of New York which was formerly known, and identified in the above-captioned action, as the New York City Department of Consumer Affairs (hereinafter referred to as “**DCWP**”)<sup>1</sup>. DCWP has the duty and authority to administer and enforce New York City Administrative Code (“NYC Code”) § 20-700 et seq. and Title 6 of the Rules of the City of New York (“6 RCNY”) § 5-01 et seq. (collectively, “**Consumer**

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<sup>1</sup> Lorelei Salas was DCWP Commissioner at the time Plaintiffs filed the Complaint until April 30, 2021.

**Protection Law**” or “**CPL**”). DCWP has its principal place of business at 42 Broadway, New York, NY 10004.

2. Berkeley Educational Services of New York, Inc. does business as Berkeley College and is a corporation organized under the laws of the State of New York with its principal place of business at 3 E 43<sup>rd</sup> St, New York, NY 10017.

3. On October 18, 2018, Plaintiffs sued Defendant in New York County Supreme Court (Index No. 452025/2018) (the “**Action**”) alleging that Defendant violated various provisions of the CPL in the manner specified in its Complaint. A true and correct copy of the Complaint is annexed as **Exhibit A**.

4. Defendant moved to dismiss the Complaint. In an order dated June 18, 2019, the court denied that motion “except to the extent that [] claims are barred by the three year statute of limitations as conceded by the plaintiff at oral argument.”

5. Defendant answered the Complaint on July 25, 2019, asserted counterclaims, and denied committing any violation of the CPL. A copy of Defendant’s Answer is annexed as **Exhibit B**.

6. Plaintiffs moved to dismiss Defendant’s Counterclaims, which motion was granted by order dated May 4, 2020.

7. The Parties have now determined to settle the Action on the terms set forth in this Settlement Agreement to avoid the expense and uncertainty of continued litigation.

8. The Parties enter into this Settlement Agreement freely and voluntarily agree to its terms and conditions.

9. Defendant’s entry into this Settlement Agreement shall in no way be construed as an admission as to any wrongdoing by Defendant, its officers, directors, trustees, employees,

agents, or representatives. Defendant expressly denies the allegations asserted by Plaintiffs in the Action and specifically disagrees that it, or any of its officers, directors, trustees, employees, agents, or representatives, have, in any way, violated the CPL or have otherwise engaged in any deceptive or unconscionable trade practice.

10. Each of the Parties expressly warrants and represents that it has full power, capacity, and authority to execute and deliver this Settlement Agreement on behalf of the Party indicated.

11. This Settlement Agreement shall be binding upon, enforceable against, and inure to the benefit of the Parties and their respective successors, assigns, heirs, executors, and administrators and upon any corporation, partnership, or entity into or with which any Party may merge or consolidate.

12. This Settlement Agreement becomes effective as of the date upon which it is fully executed by all Parties and approved by the Court (the “**Effective Date**”). With respect to any obligations imposed upon the Defendant pursuant to this Settlement Agreement and that are not otherwise released herein, such obligations will remain in effect for three (3) years from the Effective Date (the “**Term**”) unless it is otherwise expressly stated in this Settlement Agreement that another term shall apply. The Parties shall bear no further obligation created by this Settlement Agreement upon the expiration of the Term.

## II. **SETTLEMENT TERMS:**

1. **Settlement Payment:** In full and final settlement of all claims alleged in the Complaint (Ex. A), including but not limited to those pertaining to certain named and unnamed consumers, Defendant shall pay Plaintiffs \$350,000 within 15 days of the Effective Date by wire to:

Bank: Citibank, N.A.  
Address: 111 Wall Street  
New York, NY 10043  
Routing No.: 021000089  
SWIFT: CITIUS33  
Account No.: 30920684  
Customer Name: City of New York Department of Finance  
Account Name: Collection- DCA CPR

Plaintiffs shall retain complete discretion to distribute any portion of Defendant's Settlement Payment to consumers as restitution. Any remaining portion of the Settlement Payment shall revert to the City as civil penalties.

2. **Policies & Procedures:** Without admitting that any prior practices or procedures violated the CPL – or any other federal, state, or local law – Defendant agrees to the following provisions. Berkeley will institute all of these policies within 30 days of the Effective Date and maintain them for the duration of the Term.

a) **Employment Discipline:** Berkeley shall include in any written policy applicable to Admissions staff who communicate information about Berkeley to students and prospective students that no such staff member shall make a material misstatement, as defined in Paragraph 2(h)(vii) of this Section, to a student or prospective student, knowingly or inadvertently, and that any such material misstatement will expose the staff member to employment discipline, which Berkeley applies on a sliding scale depending on the facts and circumstances surrounding the violation and ranges from additional training through termination of employment.

b) **Transfer Credits:** Berkeley will provide written notice to students of the award of transfer credits by the Registrar's Office. The Registrar's Office will send that notice directly by email to the student within such time as is reasonable under the facts and circumstances presented by the transcript and the transfer credit request.

c) **Entrance Counseling:** Berkeley denies that its employees or representatives have ever interfered in a prospective student's entrance counseling session on the Department of Education's website. Nonetheless, because Berkeley agrees with DCWP that any interference would be improper, Berkeley will incorporate into its Financial Aid Code of Conduct the following statement:

- i. "Entrance counseling required by the Department of Education must be completed by the student without any assistance from Berkeley or a representative of Berkeley. Examples of improper

assistance include providing answers to students completing the module(s), clicking buttons for them, or encouraging students to complete the entrance counseling at a faster pace. Violation of this provision may expose the employee to employment discipline.”

d) **Financial Aid Training:** Berkeley will incorporate into its existing training schedule mandatory annual refresher training for Financial Aid Associates on all three areas of financial aid (*i.e.*, federal, state, and Berkeley institutional aid).

e) **Challenge Loan Application & Disclosure Forms:** Without conceding that there was anything wrong with the Challenge Loan Disclosure form to which DCWP objected in Paragraph 78 of the Complaint, Berkeley represents that, in 2016, it ceased using the form. Berkeley does not and shall not use the statement “Loans generally have three repayment options; Defer Payments, Pay only interest and Make Full Payments” in any Financial Aid or Student Accounts documentation provided to students or in any documents used to train staff who interact with students on the subjects of financial aid or student loans.

f) **Communications Concerning Financial Aid:** Berkeley shall continue to provide students with estimated semester balance amounts in the “open items checklist” emails that Berkeley regularly sends to students whose financial aid applications are incomplete or are otherwise missing information necessary for the disbursement of financial aid during the Term of this Agreement. These emails shall be sent in a manner that protects the student’s privacy rights.

g) **Institutional Loan Documentation:** Berkeley does not collect fees or interest on institutional loans that students have not signed either in person or electronically and it agrees not to do so for the Term of this Agreement.

h) **Admissions interviews:** The Parties agree that they have a mutual interest in ensuring that students are provided with accurate and truthful information with respect to attending Berkeley. As part of Berkeley’s commitment to that goal and to provide DCWP with assurance that students are being properly advised about Berkeley when deciding whether to attend, Berkeley will provide DCWP with access to recordings of admissions interviews by Berkeley Admissions Associates (and others who conduct admissions interviews, who shall be considered Admissions Associates for purposes of this section) of prospective students on the following terms and conditions:

i. For a two-year period commencing on the first day of the calendar month starting after the Effective Date of this Agreement, Berkeley will randomly record the audio portion of 10 admissions interviews per month for a total of 120 interview recordings on an annual basis. These recordings shall occur at random times during a given month and shall record a random distribution of Admissions Associates. Such recordings will be made without the knowledge of the Admissions Associate or the prospective student, both of whom will be told that

the interview “may be recorded for quality assurance purposes,” but will not know whether the interview is being recorded.

ii. Berkeley shall provide copies of the recordings monthly to DCWP on or before the first business day of the second month following the month in which the recordings were made (*e.g.*, if the recordings are made in January, then they will be provided to DCWP on or before March 1; if in February, then they will be provided on or before April 1). Each monthly set of recordings will be referred to as a Batch. Berkeley shall remove or redact all personally identifying information of the student or prospective student, including but not limited to their names, addresses, social security, or account numbers discussed in the interview, and those of the student’s parents. Berkeley shall not alter or redact any material other than that which is necessary to make the student anonymous to DCWP. Berkeley shall retain the original recordings in unredacted format for the duration of the Term in the event that there are questions, or any dispute arises concerning the redactions.

iii. Because this Agreement gives DCWP access to Berkeley’s interview process on a scope and scale that it could not otherwise obtain, DCWP agrees that the purpose of its audit of admission interviews is not to search for non-material misstatements by Admissions Associates, but it is instead to search for repeated, multiple or persistent acts which DCWP believes constitute deceptive or unconscionable trade practices which materially violate the CPL. This assurance is a material inducement to Berkeley agreeing to provide DCWP with recordings of admissions interviews.

iv. Because of the importance of rapidly addressing any potential violation of the CPL, DCWP agrees to notify Berkeley within 45 days of receiving a recording that it believes contains a material misstatement that could potentially violate the CPL. DCWP will identify the statement and concisely state the reason for its concern. Berkeley shall then have 21 days in which to review the matter, address the issue with the Associate and report back to DCWP its findings and any action taken as a result. DCWP agrees not to seek or impose a fine or penalty, or to commence litigation, over the first alleged violation or any other violation observed in the same Batch. This paragraph applies only to the first Batch in which DCWP identifies a material misstatement.

v. Should DCWP detect what it believes to be a second material misstatement that could potentially violate the CPL in a subsequent recording (*i.e.*, a recording submitted in a later month), it will again notify Berkeley of its concern, identify the statement, and concisely state the reason for its concern within 45 days of receipt of the recording. Berkeley shall then have 21 days in which to review the matter, address the issue with the Associate and report back to DCWP its findings and any action taken as a result. DCWP agrees not to seek or impose a fine or penalty, or to commence a litigation over the second alleged violation or any other violation observed in the same Batch. This paragraph

applies only to the second Batch in which DCWP identifies a material misstatement.

vi. Should DCWP detect what it believes to be a third material misstatement that could potentially violate the CPL in a subsequent recording (*i.e.*, a recording submitted in a later month than the second misstatement), it shall again notify Berkeley of its concern, identify the statement, and concisely state the reason for its concern within 30 days of receipt of the recording. However, DCWP shall be free to take any steps it is empowered by law to take to address the third alleged violation or any other violation observed in the same Batch. This paragraph applies only to the third Batch in which DCWP identifies a material misstatement.

vii. A “material misstatement” for the purposes of this section of this Agreement is defined as any false, falsely disparaging, or misleading statement or other representation of any kind during the interview which a prospective student could be expected to rely upon, or has relied upon, in the decision to enroll at Berkeley based on the totality of everything said in the interview. Berkeley reserves its right to argue that the “reasonable consumer” standard applies with respect to a “prospective student.” If Berkeley can demonstrate to DCWP that an alleged misstatement is not a material misstatement for the purposes of the CPL, then such alleged misstatement shall not be counted towards a third violation for the purposes of this section.

viii. If DCWP provides notice of a third potential violation of the CPL to Berkeley, then DCWP shall no longer be obligated to provide notice of any violations it may detect subsequently. Nonetheless, as a courtesy to Berkeley, DCWP agrees to use reasonable efforts to provide semiannual notice to Berkeley of any additional violations it may detect, by identifying any recording(s) in which such violation(s) was detected. Such notice is without prejudice to DCWP’s right to take any action it is authorized to undertake by law, and DCWP’s failure to provide any such notice to Berkeley may not be interpreted in any manner that suggests Berkeley is acting in compliance with the CPL.

ix. DCWP shall treat the recordings provided to it under this Agreement as confidential and proprietary business information and shall keep them in a secure location allowing access only to its employees and other authorized individuals (e.g., student interns) for the purposes intended by this Agreement or as required to respond to a discovery or FOIL request or to a court order. If DCWP is served with a subpoena, discovery request, FOIL request, or order that seeks to compel the production of the recordings provided pursuant to this Agreement, DCWP shall give Berkeley written notice within seven (7) days of receipt. If Berkeley files a motion or petition for a protective order or to otherwise quash or modify the request before the date of production or any adjourned date thereof, then DCWP shall not produce the recordings until after the Court rules on the motion or petition. If no such motion or petition is filed, or

if the Court denies such a motion or petition, then DCWP may comply with the request. Berkeley's motion or petition must include a request for a stay except where the stay is automatically imposed by law. If the Court denies the request for a stay, then DCWP may release material if doing so is necessary to comply with FOIL, discovery, or court deadlines.

i) **Debt Relief:** Except as provided in subsection (iii) below, Berkeley will not take any steps to collect or pursue any currently outstanding debt owed to it by students for unpaid tuition or fees incurred prior to January 1, 2019. This agreement shall not affect any amounts paid on such debt prior to the Effective Date of this Settlement Agreement and shall not affect Berkeley's right to demand and/or collect full payment of all student debt incurred on or after January 1, 2019.

i. Berkeley further agrees that it shall not withhold official transcripts of students based on any unpaid tuition or fees incurred prior to January 1, 2019.

ii. Berkeley represents that all credit reporting of delinquent student accounts to credit rating agencies (*e.g.*, Transunion, Equifax, Experian) is made by third-party debt collection service providers engaged by Berkeley. Within 15 business days after the Effective Date of this Settlement Agreement, Berkeley shall instruct each of the third-party debt collection service providers that it uses to request that each of the credit rating agencies remove all consumer trade lines concerning student debt incurred at Berkeley prior to January 1, 2019. Whenever necessary, Berkeley will provide any additional information or authorization requested by the debt collection service providers in order to accomplish the purposes of this paragraph, including advising them of Berkeley's obligations under this Settlement Agreement. Berkeley shall not be responsible for any error, omission or delay caused by the credit rating agencies in removing consumer trade lines of affected students.

iii. Berkeley may pursue the debt described in Paragraph (2)(i) of this Section only as a defense, counterclaim, cross-claim, or set-off in an action or proceeding brought by a covered student against Berkeley arising out of or concerning money paid or owed to Berkeley. The rights reserved in this subsection shall not be abrogated or modified by anything in this Settlement Agreement.

iv. Berkeley represents that the debt described in paragraph (2)(i) is approximately \$20,000,000.

v. This section shall survive the Term of this Settlement Agreement.

j) **Debt Collection:** Berkeley shall comply with the following requirements and incorporate them into its written debt collection policies:



i. Berkeley may not state or imply that it can “issue a legal judgment.” Instead, Berkeley may tell students that if arrangements to pay the debt are not made, then Berkeley may turn the matter over to a debt collection agency and/or file a lawsuit against the student that may result in a judgment from the court requiring the student to pay the debt.

ii. Berkeley shall not discuss with a student the substance of any lawsuit brought by it against the student. Berkeley will instead provide the student with the contact information for Berkeley’s counsel and direct the student to contact Berkeley’s counsel for any further information or documentation concerning the lawsuit. This policy does not prohibit Berkeley from providing information to the student about the amount owed to it or from accepting payment of the student’s debt.

iii. When informing collections agencies, counsel, courts, credit bureaus, and students in writing about the amount of debt owed by a student to Berkeley, Berkeley will include the date or dates when the student’s debt accrued. Where the debt accrued over time (e.g., tuition owed for several semesters and not later consolidated by the student), Berkeley will itemize the debts, listing the amount and date of accrual for each one. In any writing where Berkeley states a date of accrual for a student’s debt, it will state all dates of accrual.

iv. When Berkeley sues to collect debt from a student who has signed a “re-enrollment contract,” it shall not demand in the suit any charges predating that re-enrollment contract, except as stated in the contract.

v. Berkeley shall refer to itself as “Berkeley College” or “Berkeley Educational Services” in all communications it sends to students seeking to collect debt.

### **III. COMPLIANCE WITH THE LAW:**

Defendant shall comply fully with all applicable portions of the NYC Code, including the Consumer Protection Law, the Rules of the City of New York, and all other relevant city, state, and federal laws and regulations, without regard to any requirement delineated or not delineated in this Settlement Agreement.

Where, however, the terms of this Settlement Agreement exceed statutory requirements, Defendant shall comply with this Settlement Agreement.

**IV. CONSEQUENCES OF BREACH:**

1. Violation of sections II.1 and II.2 shall constitute a violation of NYC Code § 20-704(b) and shall also constitute a material breach that may, if uncorrected, subject Berkeley to further litigation for breach of this Agreement.

a) Correcting a Violation. DCWP shall notify Defendant in writing where DCWP discovers a material breach and how it may be reasonably corrected to restore compliance with this Agreement. Defendant shall have 30 days after receiving such notice to provide evidence of correction. If such evidence is not provided, DCWP may consider this Agreement breached, and will notify Defendant of such in writing and take such action as it deems appropriate.

2. All other violations of this Settlement Agreement shall constitute a violation of NYC Code § 20-704(b).

**V. WAIVER OF ALL APPEALS:**

The Parties hereby expressly and irrevocably waive all right to any hearing, challenge, or appeal in any court or administrative body of any fact, issue, or matter alleged in or that could have been alleged in the Complaint or this Action, whether those rights arise under local, state, or federal law.

**VI. RELEASE:**

1. The term “**Claims**” as used in this Agreement shall mean any and all claims (including cross-claims, counterclaims, third-party claims or fourth-party claims), actions, causes of action, allegations, controversies, suits, rights, obligations, debts, demands, agreements, promises, liabilities, damages, and disputes of any kind or nature, including but not limited to compensatory, punitive or exemplary damages, statutory (including restitution) damages, treble damages, claims for indemnification, contribution, or statutory rights or violations, claims for penalties, interest, costs or attorneys’ fees, sanctions, judgments, losses, charges, and complaints whatsoever, of every kind, nature and description, under any law of any jurisdiction, whether at

law, in equity or otherwise, whether based on statute, regulations, common law, civil law or any other type, form or right of action, and whether foreseen or unforeseen, actual or potential, matured or unmatured, contingent or liquidated, known or unknown, or accrued or not accrued, of every kind and nature.

2. Effective as of the Effective Date, Plaintiffs (“**Releasors**”) fully, finally and forever release, settle, remise, acquit, relinquish, and discharge Defendant and each of its past and present parents, subsidiaries, affiliates, officers, directors, trustees, employees, shareholders, successors and assigns (“**Releasees**”) for and from any and all Claims that Releasors could have or did assert in the Action against the Releasees from the beginning of time to the Effective Date of this Settlement Agreement (“**Release**”).

3. Except as provided by law, this Release covers only the Claims being released by Plaintiffs and may not be construed to limit, in any way, the rights of any third party to bring claims, file actions, or otherwise exercise a legal right by suing in a court of competent jurisdiction. This Release does not impair or affect the validity or enforcement of judgments obtained by any party in prior legal actions.

4. To the extent that Plaintiffs choose to pay restitution to a consumer using the Settlement Payment, Plaintiffs shall obtain from such consumer a document releasing claims against Defendant related to such payment that consumer claims running in favor of Defendant. Plaintiffs shall provide such release to Defendant within a reasonable time after receipt, but in no instance later than 15 days.

## VII. MISCELLANEOUS:

1. This Settlement Agreement does not constitute Plaintiffs’ approval of any of Defendant’s business practices.

2. The Supreme Court of the State of New York, County of New York, shall have exclusive jurisdiction over all provisions of this Settlement Agreement and over all disputes of any kind relating in any way to, or arising in any way out of, this Settlement Agreement. The Court shall retain jurisdiction over this matter for the purpose of effectuating such relief as it deems necessary to carry out and effectuate the terms thereto.

3. The provisions of this Settlement Agreement shall be construed in accordance with the laws of the State of New York without regard to the application of its choice of law rules.

4. If a court of competent jurisdiction declares any provision of this Settlement Agreement invalid, then any such provisions so affected will become void, but the remainder of the Settlement Agreement shall remain in place.

5. Plaintiffs' failure to insist upon the strict performance of any obligation in this Settlement Agreement shall not be construed as a waiver of any of Plaintiffs' rights or the Defendant's obligations under the Settlement Agreement.

6. Nothing in this Settlement Agreement shall be construed as relieving Defendant of its duty to comply with all applicable local, state, and federal laws.

7. This Settlement Agreement, together with its exhibits, contains the entire agreement and understanding among the Parties hereto with respect to the subject matter of the Settlement Agreement, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the same subject matter. The express terms this Settlement Agreement control and supersede any course of performance or dealings inconsistent with its terms.

8. Except as expressly provided herein, including with respect to any Claims released by Plaintiffs, this Settlement Agreement does not bar or limit in any way the authority of Plaintiffs to exercise their investigative and enforcement powers under any law or rule within their jurisdiction.

9. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and which together shall constitute one and the same instrument. Signed signature pages may be transmitted by email, and any such signature shall have the same legal effect as an original.

10. Within five (5) days of receipt of the Settlement Payment set forth in Section II(1), *supra.*, Plaintiffs shall file with the Court a fully executed Stipulation of Discontinuance in the form annexed hereto as **Exhibit C**.

11. Notices required by this Settlement Agreement shall be provided in writing via email and Certified Mail Return Receipt Requested to the following persons:

If to Plaintiffs:

Adam Blumenkrantz, Esq.  
DCWP  
42 Broadway  
New York, NY 10004  
[SettlementNotices@dcwp.nyc.gov](mailto:SettlementNotices@dcwp.nyc.gov)

If to Defendant:

Berkeley Educational Services of New York, Inc,  
Attn. President  
3 East 43<sup>rd</sup> Street  
New York, NY 10017  
[Legal@BerkeleyCollege.edu](mailto:Legal@BerkeleyCollege.edu)

with a copy to:

David F. Bayne, Esq.  
Akerman LLP

1251 Avenue of the Americas, 37<sup>th</sup> Floor  
New York, NY 10020  
[David.Bayne@akerman.com](mailto:David.Bayne@akerman.com)

**IN WITNESS WHEREOF**, each of the undersigned has executed this Settlement

Agreement as of the date indicated next to his, her, or its name.

**BERKELEY EDUCATIONAL  
SERVICES OF NEW YORK, INC.  
(D/B/A BERKELEY COLLEGE)**

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By: Randy Luing  
President  
3 East 43<sup>rd</sup> Street  
New York, NY 10017  
Date signed: January \_\_, 2022

**CITY OF NEW YORK & NEW  
YORK CITY DEPARTMENT OF  
CONSUMER AND WORKER  
PROTECTION**


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*Adam Blumenkrantz*  
By: Adam Blumenkrantz, Associate  
General Counsel  
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Michael Tiger, Deputy General Counsel  
Department of Consumer & Worker  
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42 Broadway  
New York, NY 10004  
(212) 436-0287  
[ablumenkrantz@dcwp.nyc.gov](mailto:ablumenkrantz@dcwp.nyc.gov)  
Date signed: January 14, 2022

1251 Avenue of the Americas, 37<sup>th</sup> Floor  
New York, NY 10020  
[David.Bayne@akerman.com](mailto:David.Bayne@akerman.com)

**IN WITNESS WHEREOF**, each of the undersigned has executed this Settlement Agreement as of the date indicated next to his, her, or its name.

**BERKELEY EDUCATIONAL  
SERVICES OF NEW YORK, INC.  
(D/B/A BERKELEY COLLEGE)**

  
By: Randy Luing  
President  
3 East 43<sup>rd</sup> Street  
New York, NY 10017  
Date signed: January 14, 2022

**CITY OF NEW YORK & NEW  
YORK CITY DEPARTMENT OF  
CONSUMER AND WORKER  
PROTECTION**

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Date signed: January \_\_, 2022