



Which OPM Contract Terms Should Concern Campus Leaders and Why?

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Online program managers (OPMs) remain under scrutiny for their business practices. In January 2025, the Department of Education (ED) issued new guidance for third-party servicers¹ (TPSs), explicitly calling out OPMs for misrepresenting themselves to students—an aspect not addressed in previous TPS guidance.² Last year, we raised similar concerns about OPM white labeling,³ and this year, we reiterated that online students deserve transparency in their educational experiences.⁴ While federal regulations may support these efforts, the true impact of an OPM’s relationship with students and universities ultimately hinges on the contracting process.

When deciding whether to partner with an online program manager (OPM), Chief Online Learning Officers (COLOs) have a lot to consider. This process usually starts with evaluating the university’s current online learning capabilities, followed by issuing a request for proposals (RFP) to gather options from different OPMs. At this stage, COLOs often focus on how well each company aligns with their university’s mission, identity, and values—a crucial factor highlighted in our previous research.⁵ Another important step is assessing the university’s own operations, which helps determine whether the institution can address its online learning needs in-house or if it truly requires external support to overcome capability and capacity challenges.

Ultimately, the success of the partnership often hinges on the details of the contracting process. The contract serves as the foundation upon which parties may build a productive relationship.⁶ With contracts, especially those involving external partnerships, clarity and foresight are essential, yet also difficult to anticipate. Our previous research about university agreements with OPMs reveal that contract terms and definitions dictate the extent to which the university may act in an agile and responsive manner when circumstances change.⁷

We recently spoke with Chief Online Learning Officers (COLOs) to hear about their experiences with OPM contracting,⁸ and several key concerns came up. For example, COLOs emphasized the importance of addressing specific details like service-level terms; fees, payments, and penalties; performance monitoring; termination clauses; and contractual scope. They raised questions about whether the OPM could deliver customized, responsive designs tailored to their universities’ needs and if they could consistently maintain a service quality that aligned with the university’s image.⁹ COLOs

¹ U.S. Department of Education, 2025

² U.S. Department of Education, 2023

³ Kinser et al., 2024

⁴ Zipf et al., 2025

⁵ Sun & Turner, 2022

⁶ Sun et al., 2024

⁷ Sun & Turner, 2022

⁸ Sun & Turner, 2022

⁹ See also Kinser et al., 2024

also flagged potential risks,¹⁰ such as contractual clauses that might limit their university's rights or create challenges if they needed to terminate or modify the agreement due to unmet performance goals or changes in organizational priorities.

These contract terms are not just boilerplate—they are opportunities to align expectations and reduce future misunderstandings. By laying this groundwork, campus leaders can position their universities to maintain high-quality outcomes, protect their interests, and build partnerships that evolve over time. Yet despite the importance of contracting, less than half of the COLOs we spoke with felt confident about crafting strong outsourcing contracts. Some even shared that their legal counsel was not as helpful as they had hoped, often due to limited familiarity with OPM arrangements or inability to anticipate and address inequitable, confusing, or unintended contractual terms.



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In this brief, we present key contract terms that campus leaders should consider when contracting with OPMs. We focused on three major areas — finances, academics, and performance — based on COLO reports of contract terms that presented the most challenging areas to anticipate, negotiate, or frame. For each of these areas, we provide example contract terms that come from our review of 48 contracts between OPMs and universities across the US. For each set of terms, we offer one example that should be avoided (highlighted in red), one that is okay but could use some adjustments (in yellow), and one that is most beneficial to the university (in green). This brief should serve as a resource for any campus member involved in contracting with third-party vendors, as many of the terms have applicability to outsourcing beyond OPMs.

Finances

OPMs generally work with universities under two types of agreements: fee-for-service or, more commonly, revenue-sharing models. Regardless of the structure, these contracts often involve millions of dollars flowing to the OPM over the life of the agreement, which

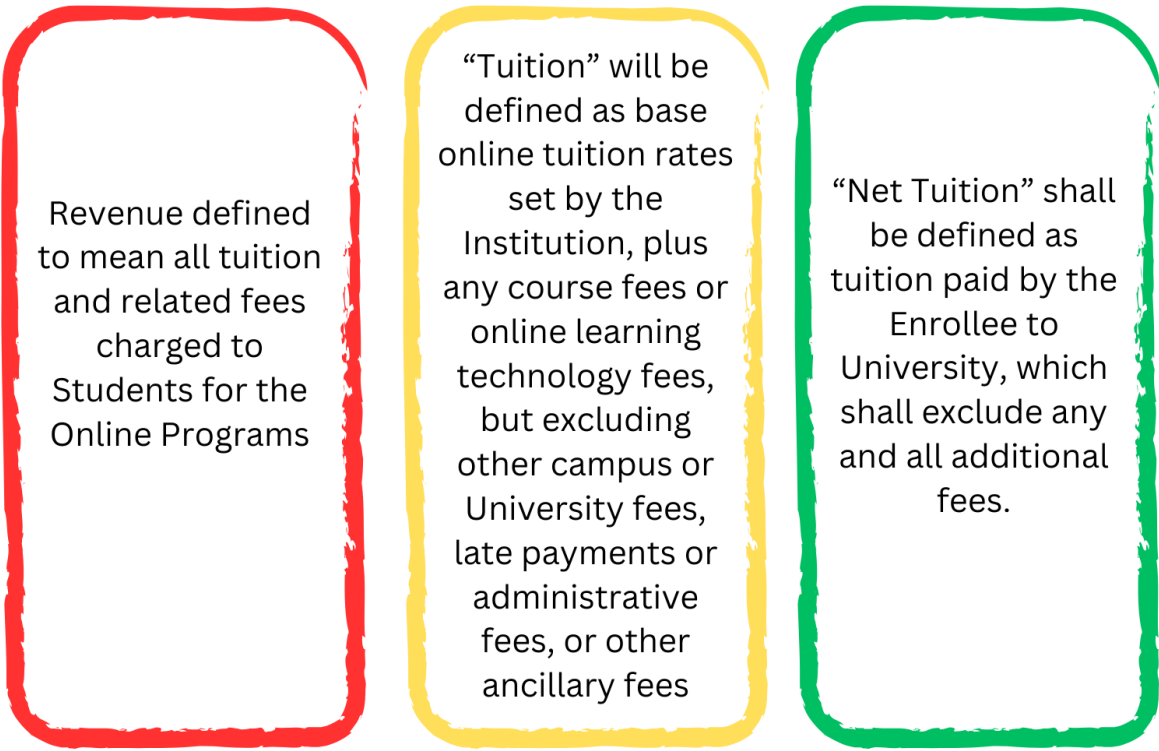
¹⁰ Risks included failed relationships, which have been highly publicized in the news, including Concordia University and Hot Chalk (Burke, 2020) and the University of Southern California and 2U (Lederman, 2023).

can span a decade or longer.¹¹ It is therefore crucial for campus leaders to prioritize financial terms that serve the university’s best interests.¹² In this section, we focus on three key financial considerations: how revenue is defined, how student discounts factor into revenue calculations, and how financial reporting is handled between the university and the OPM.

Revenue Definition

When it comes to revenue-sharing agreements, much of the attention tends to center on the percentage allocated to the OPM—which can range from around 50% to, in extreme cases, as high as 80%. However, an often overlooked but critical detail is how “revenue” is defined in the contract. Variations in how revenue and fees are defined can significantly impact the total financial outcome over the life of the agreement and, in some cases, even lead to legal disputes.¹³ It is essential for campus leaders to thoroughly review and understand the terms defining revenue in these contracts.

Consider, for example, the following three definitions:



Revenue defined to mean all tuition and related fees charged to Students for the Online Programs

“Tuition” will be defined as base online tuition rates set by the Institution, plus any course fees or online learning technology fees, but excluding other campus or University fees, late payments or administrative fees, or other ancillary fees

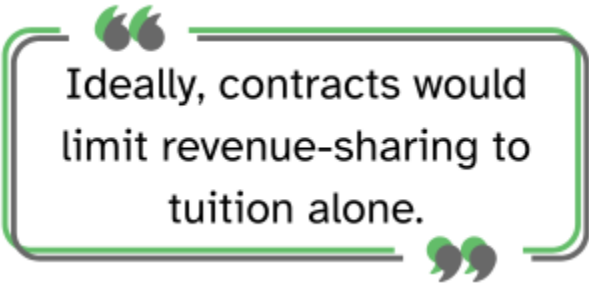
“Net Tuition” shall be defined as tuition paid by the Enrollee to University, which shall exclude any and all additional fees.

¹¹ Recent analysis shows that about two-thirds of OPM contracts involve more than \$2 million in annual revenue share (Morgan, 2024)

¹² Turner et al., 2024

¹³ See, e.g., Knott (2024a).

All three clauses come from revenue-sharing agreements, yet they show wide variation in how revenue is calculated. For example, the first clause mentions “related fees,” which could include all student fees, even those unrelated to online learning. This lack of clarity can lead to disagreements after the contract is in place. If the OPM has not been collecting all related fees, they might argue it was a misunderstanding or claim unjust enrichment. Conversely, if the OPM has not been charging certain fees, the university could push for a narrower definition of “related fees,” potentially invoking a waiver of rights or a statute of limitations (typically 2–6 years).



Ideally, contracts would limit revenue-sharing to tuition alone.

The second clause improves on this by clearly specifying which fees are included, making it easier for the university to calculate and anticipate revenue-sharing amounts without ongoing disputes. However, even with this clarity, the inclusion of course and online learning fees inflates the amount shared with the OPM. Ideally, contracts would limit revenue-

sharing to tuition alone. The third clause demonstrates this approach, defining revenue as tuition only and explicitly excluding all fees. This clarity allows the university to adjust fees independently without affecting payments to the OPM.

To avoid confusion or disputes over revenue definitions, it’s crucial to differentiate terms and anticipate their impacts. We recommend four actions for campus leaders:

1. **Aim for clauses like the third example**, where revenue excludes all fees.
2. **Clearly define tuition** and include a formula clause to specify calculations.
3. **Evaluate competing interpretations** of all terms to ensure clarity.
4. **Document the payment formula** with every transaction to confirm shared understanding.

Student Discounts

Just like the inclusion of fees in revenue calculations, the way student discounts are factored into the total payment can considerably impact the overall amount of revenue shared with the OPM. Discounts often apply to specific groups of students, such as military personnel, veterans, senior citizens, or state residents. These discounts—including institutional scholarships, tuition waivers, and the return of Title IV funds—can substantially reduce the revenue collected from students. In turn, this lowers the amount of revenue available for sharing with the OPM, potentially making a big difference over the course of the agreement.

Three examples of how student discounts provide an illustration of these differences:

Any scholarships, tuition waivers, hardship reductions or other comparable discounts which apply against the published rates shall not impact the calculation of Tuition hereunder

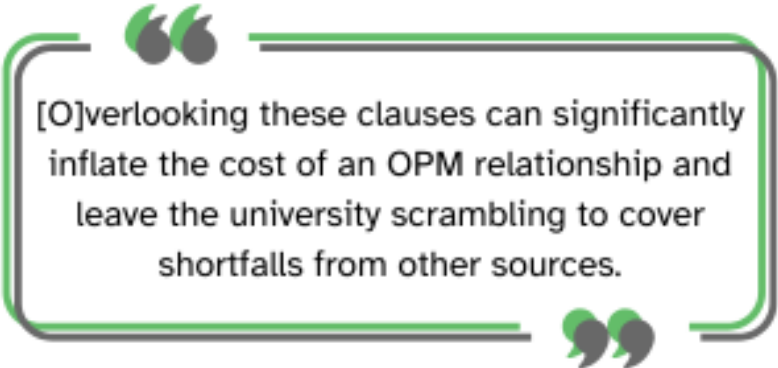
Less (a) permitted [OPM] discounts granted to eLearning Program Students, and (b) amounts refunded to students who have withdrawn from Courses pursuant to published University policy. No other discounts, credits, scholarships, awards, or write-offs shall be taken into account in calculating Gross Receipts.

Less (a) Corporate Partnership Program discounts granted to Program Students, (b) Military Discounts granted to Program Students, (c) amounts refunded to students who have dropped any Courses or withdrawn from the University pursuant to published University policy, (d) University and [redacted] University System employee and family members tuition waivers, and (e) other mutually-agreed upon discounts.

The way student discounts are handled in contracts can dramatically affect the financial dynamics of an OPM partnership. The first example clause follows a published rates with no discounts approach, meaning the OPM receives the full posted tuition amount regardless of factors like student course withdrawals. This can create situations where the OPM gets paid more than the university actually collects unless the contract explicitly addresses these scenarios. The second clause improves on this by accounting for student withdrawals, but it still overlooks many other common discounts, such as military benefits or other institutional scholarships. In contrast, the third example takes a more comprehensive approach, factoring in a wider range of discounts and exceptions, which provides better alignment with the actual revenue collected from students.

Importantly, the second and third examples come from contracts with the same OPM but different universities. Taken together, these terms highlight that OPMs may default to excluding discounts unless university representatives specifically negotiate their inclusion. If campus leaders do not

know to ask for these provisions, the university could end up responsible for paying the OPM based on revenue it never actually received from students. Just like with revenue definitions, overlooking these clauses can significantly inflate the cost of an OPM relationship and leave the university scrambling to cover shortfalls from other sources.



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To mitigate financial risks and confusion about the discount effects, we recommend the following four actions:

1. **Align revenue calculations with actual collections** by deducting all applicable student discounts.
2. **Clearly define and categorize all discounts** to ensure accurate revenue-sharing formulas.
3. **Require periodic reconciliation** of tuition collections and adjustments to OPM payments.
4. **Document and share records** of applied discounts to verify compliance and enable audits.

Financial Reporting

The final set of clauses we will discuss related to finances focuses on financial reporting requirements. Fewer than 30% of the contracts we reviewed contained specific clauses requiring financial reporting. In contrast, “right to audit” or “inspection” clauses were much more common. Even so, campus leaders should consider including explicit financial reporting requirements in OPM contracts, as these clauses increase the transparency of OPM operations. When contracts do not require detailed financial reporting from the OPM, universities often face limited or no details about how the OPM is spending the money they receive to perform their services. In other words, institutions operate with limited information and do not know whether they are receiving full value for their investment. A clear delineation of the allocated funds also facilitates strategic planning for future internal operations. That is, if universities can see explicit breakdowns of OPM costs, they can better prepare to budget for these costs before attempting to perform these services internally as well as better measure expected outputs.

Financial reporting requirements also help universities prepare for potential future reporting obligations. For instance, Minnesota recently passed legislation¹⁴ that imposes



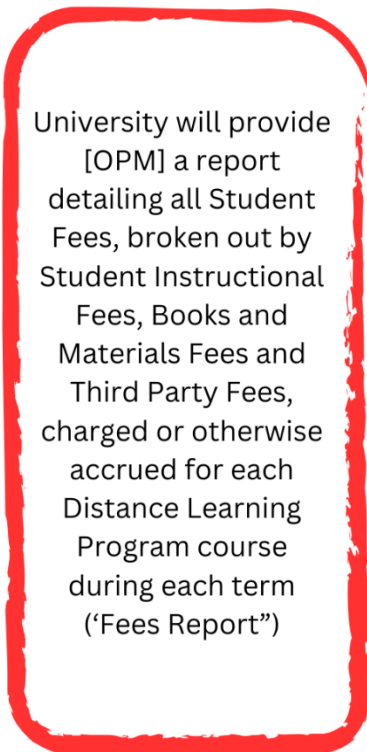
By including financial reporting clauses now, universities can proactively reduce the administrative burden of future compliance and ensure smoother operations if such regulations are enacted.



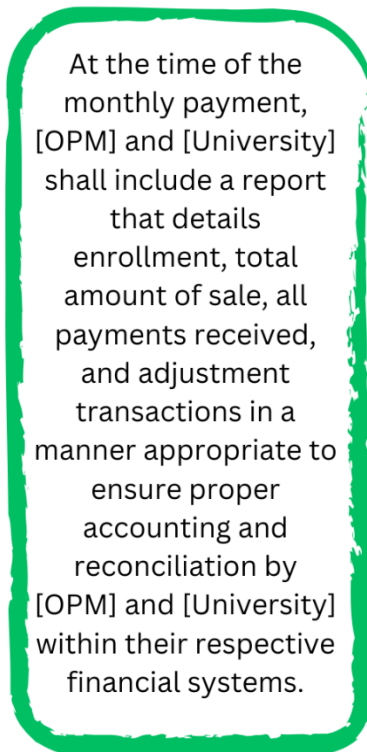
regulations on how public universities can engage with OPMs. Among other measures, such as banning revenue-sharing agreements, the law requires universities to submit annual reports to the legislature. These reports must include comparisons between projected and actual enrollment and revenue generated through OPM partnerships. While similar legislation has failed in

other states, and the Department of Education recently withdrew proposed federal regulations for third-party servicers,¹⁵ Minnesota's actions may signal a shift toward increased state or federal oversight in the future. If reporting requirements become more widespread, universities may find themselves obligated to provide detailed financial reports regardless of whether their contracts explicitly require it. By including financial reporting clauses now, universities can proactively reduce the administrative burden of future compliance and ensure smoother operations if such regulations are enacted.

Due to the scarcity of these clauses in the reviewed contracts, here we present two examples:



University will provide [OPM] a report detailing all Student Fees, broken out by Student Instructional Fees, Books and Materials Fees and Third Party Fees, charged or otherwise accrued for each Distance Learning Program course during each term ("Fees Report")



At the time of the monthly payment, [OPM] and [University] shall include a report that details enrollment, total amount of sale, all payments received, and adjustment transactions in a manner appropriate to ensure proper accounting and reconciliation by [OPM] and [University] within their respective financial systems.

¹⁴ H.F. 4024, 93rd Legislature, 2023-2024 Sess. (Min. 2024). <https://www.revisor.mn.gov/bills/text.php>

¹⁵ Knott, K. (2024b)

The first clause takes an extensive but overly detailed approach, placing the entire burden of financial reporting on the university. While preparing such reports can help the university stay ahead of potential regulatory changes, this approach does not require any documentation from the OPM, which puts the university at a disadvantage. Additionally, the clause focuses only on fees, leaving out other critical financial details that would provide a more comprehensive picture.

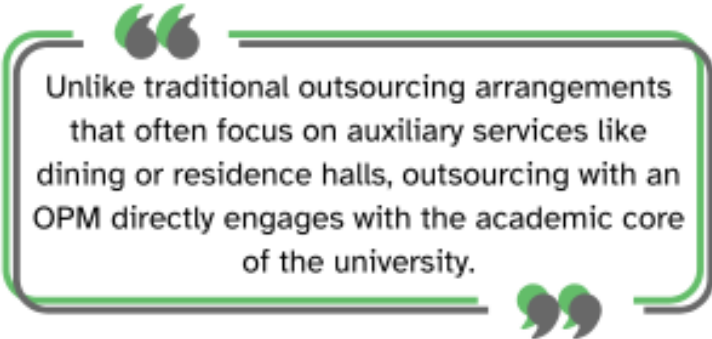
In contrast, the second clause follows a direct financial calculation approach, requiring regular and detailed reporting from both the university and the OPM. This includes enrollment data and financial details, fostering greater transparency and accountability between the two parties. While this approach does create a higher administrative workload, the detailed records it generates can be invaluable for meeting future state or federal reporting requirements, ensuring that both sides have a clear and aligned understanding of financial outcomes.

As this section revealed, effective financial reporting is essential to maintaining transparency, ensuring accountability, and meeting current and future compliance requirements in OPM partnerships. We recommend incorporating clear reporting clauses to better align expectations, avoid disputes, and proactively address evolving regulatory demands. Specifically, we suggest:

1. **Require periodic (e.g., monthly or academic term) financial reports** detailing tuition, discounts, and revenue-sharing breakdowns. These reports should be explicit about how exactly OPMs are spending the revenue they receive to perform the contracted services.
2. **Include a right-to-audit clause** for regular verification of financial data.
3. **Link payment schedules to reconciled financial reports** to capture discrepancies quickly (e.g., avoiding disputes or overpayments).
4. **Employ standardized reporting formats** to ensure clarity and comparability across data.
5. **Align reporting practices** with potential state or federal regulatory requirements such as IPEDS finance.

Academics

Unlike traditional outsourcing arrangements that often focus on auxiliary services like dining or residence halls, outsourcing with an OPM directly engages with the academic core of the university. It is understandable, then, that many campus leaders have concerns about how these partnerships might impact academic operations. The degree of influence an OPM has on academics largely depends on the scope of services they are contracted to provide. For example, some OPMs may focus solely on marketing and recruitment, while others might also offer curriculum development or instructional support. That said, regardless of the specific services an OPM provides, there are some contract clauses that should command the attention of campus leaders. In this section, we review key considerations related to intellectual property, teach-out provisions, and exclusivity—issues that are foundational to protecting the institution’s academic integrity and long-term interests.



Unlike traditional outsourcing arrangements that often focus on auxiliary services like dining or residence halls, outsourcing with an OPM directly engages with the academic core of the university.

Intellectual Property

Developing, launching, and delivering an online program involves the creation of substantial intellectual property (IP) by both the university and the OPM, including marketing materials and course curricula. Historically, questions of IP ownership sparked significant debate between faculty and universities, particularly in the early days of online learning. Recently, these concerns have re-emerged, as seen in the legislation in Minnesota which prohibits OPMs from claiming intellectual property rights over materials developed by universities.¹⁶ These concerns are further heightened by the variability in IP terms across contracts. To address this, we focus on policies governing the ownership and use of work and resources developed in these partnerships.

¹⁶ H.F. 4024, 93rd Legislature, 2023-2024 Sess. (Min. 2024).

Consider the following three intellectual property clauses:

Each party shall retain ownership of its own products, services, and intellectual property utilized or generate by such party in connection with performance of this agreement and nothing in this agreement shall be construed to grant the other party any right, title, or license therein.

[OPM] maintains ownership of all software and hardware used in delivery of services; university retains ownership of all marketing materials, syllabi, or pedagogical materials used or created during the term.

All materials prepared for University under the work orders will become property of University regardless if they are accepted or rejected

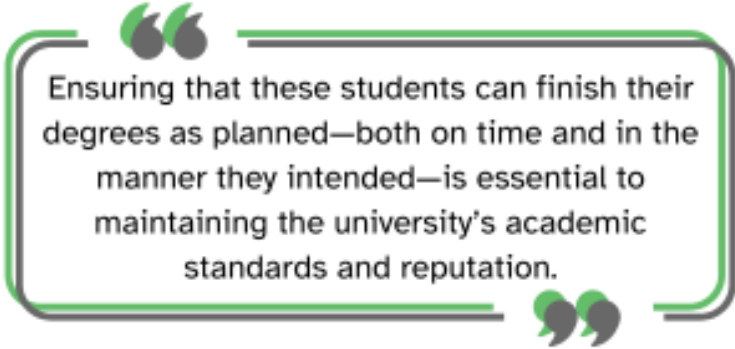
The first clause, where each party retains ownership of the intellectual property they create, was the most common in the contracts we reviewed. This arrangement directly addresses the concerns raised in Minnesota by ensuring the OPM does not retain ownership of materials created by university faculty or students. However, it also means the university forfeits ownership of OPM-generated materials specifically created for its programs and students. In this clause, the university must invest in development of its IP, but the OPM would also be able to resell or reuse materials. The second clause offers a more favorable option for universities, as it specifies that certain materials created by the OPM will transfer to the university after the contract ends. However, it maintains that proprietary elements such as special codes for linking apps, APIs, or integrations remain with the OPM. The final clause is the most advantageous for universities, granting ownership of all materials created during the contract. This provision enables the university to continue using these materials after the OPM partnership ends, supporting a smoother transition to internal operations and reducing the burden on faculty and staff. Additionally, it prevents the OPM from repurposing its work for other clients, a common practice among consulting firms.

By addressing ownership, usage rights, and branding protections, institutions can safeguard their assets while ensuring flexibility and continuity beyond the contract term. To those ends, we recommend that the university:

1. **Retain full ownership of all university-created intellectual property**, including syllabi, course content, pedagogical tools, learning maps, and tailored program design features.
2. **Define clear terms or qualifying events for ownership** of jointly developed materials.
3. **Prohibit the OPM from reusing university-developed or co-developed materials** with other clients.
4. **Ensure the university retains post-contract usage rights** for all developed materials.
5. **Restrict the OPM's use of university trademarks and branding** to authorized purposes only and for specific purposes of the engagement.

Teach Out Provisions

OPM partnerships may conclude earlier than anticipated for various reasons, such as program closures or a phased transition away from the OPM. However, it is unlikely that the partnership's termination will align with all enrolled students completing their programs. Ensuring that these students can finish their degrees as planned—both on time and in the manner they intended—is essential to maintaining the university's academic standards and reputation. Moreover, accreditors require teach-out provisions, and contract provisions must maintain terms consistent with accreditation requirements. Given this, campus leaders should carefully examine how teach-out provisions are addressed in OPM contracts. Special attention should be given to terms that outline the university's obligations for continued payments and, most importantly, how these provisions ensure that students can complete their programs without disruption and in ways that align with accreditation standards.



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Payment.

Revenue-sharing arrangements are often tied to the students recruited by the OPM. In many contracts, this means the OPM continues to receive a portion of the revenue generated by those students for the entire duration of their enrollment, even if the partnership with the OPM has ended. In such cases, the university remains obligated to share revenue with the OPM, even though the OPM is no longer

providing services, which creates an ongoing financial responsibility for the university that should be carefully evaluated when structuring these agreements.

The following clauses show how the payment for these students may differ depending on the contract terms:

For each Student who [OPM] secures the enrollment of during the Term of this Agreement, the University shall continue to remit payments to [OPM] for so long as the Student continues to take Online Programs at the University, even if beyond the expiration termination (for any reason) date of this Agreement.

For each student who [OPM] secures the enrollment of during the Term of this agreement, the University will continue to remit payments to [OPM] ... above for so long as the Student continues to take Online Educational Courses at the University, for two years beyond the termination date

University will continue to pay for [OPM] enrolled students beyond the termination of the agreement if: (a) the student continues to take online courses in the program and (b) the student is within 150% of the timeframe that it takes to complete the degree; [OPM] will receive no payments if the student withdraws or for any tuition beyond 150% of degree completion time

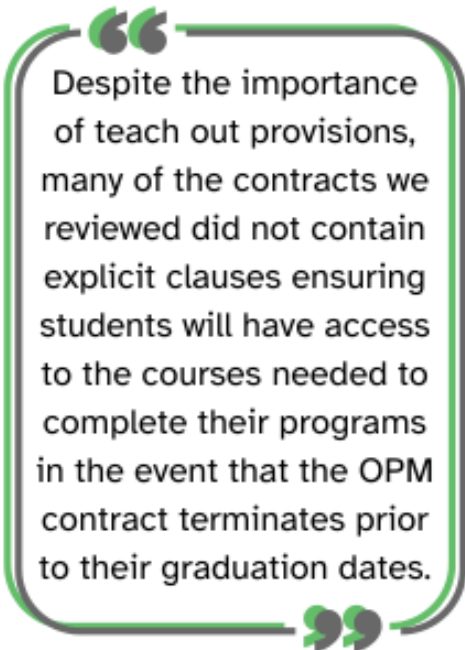
The first clause adopts an all and indefinite approach, illustrating how universities may remain obligated to make payments to the OPM for students it recruited, for as long as those students remain enrolled—even if the OPM partnership has ended. Under this arrangement, the university could be required to continue payments for years after the contract's termination, depending on the length of a student's enrollment. In contrast, the second and third clauses are more advantageous for universities, as they establish clear time limits on post-termination payments. These time parameters provide greater predictability and help universities manage their financial commitments more effectively. Collectively, these examples highlight the importance of setting explicit time limits in revenue-sharing agreements. Without explicit time limits, campus leaders will have difficulty predicting how long OPM payments will continue, as they will depend upon student enrollment and may extend well past the time frames presented in the second and third examples.

Clear payment terms during the teach-out phase should focus on aligning payments with actual services and limiting financial liabilities. Accordingly, we recommend universities protect their interests, while maintaining a strong commitment to student success, by incorporating these contractual actions:

1. **Limit OPM payments strictly to services directly supporting students** during the teach-out phase and returning unused funds collected for teach-out services.
2. **Cap post-termination payment obligations** using specific time parameters rather than credit hours, such as 150% of program completion (e.g., 3-years for 2-year degree programs and 6-years for 4-year degree programs), to avoid indefinite liabilities.
3. **Include reconciliation clauses** to adjust payments based on actual student enrollment and program participation during the teach-out.
4. **Restrict payment obligations to students actively enrolled and participating** in the program, excluding withdrawals and completions.

Student Access.

Teach out provisions help ensure that students can complete their degrees in the format and timeframe promised at the time of enrollment, both of which are critical to preserving the university's credibility and protecting its reputation.¹⁷ Despite the importance of teach out provisions, many of the contracts we reviewed did not contain explicit clauses ensuring students will have access to the courses needed to complete their programs in the event that the OPM contract terminates prior to their graduation dates. While universities may assume that they will have access to these materials, that is not always the case. As we saw with the IP clauses, some contract terms may restrict which materials the university is able to continue to access after the termination of the agreement. This gap leaves the university vulnerable to reputational risks and potential challenges in upholding its commitments to students, thus it is critical that the contract terms guarantee continued access to curricular materials.



Despite the importance of teach out provisions, many of the contracts we reviewed did not contain explicit clauses ensuring students will have access to the courses needed to complete their programs in the event that the OPM contract terminates prior to their graduation dates.

¹⁷ See also Zipf et al., 2025 for a further discussion of student rights in OPM agreements

The three examples below show how termination may affect student completion:

[OPM] and the School shall allow each student using the Platform to complete all individual courses in the Program that such student has actually commenced prior to the termination of this Agreement (except to the extent that such student is expelled by University or does not finish such course within six months following such termination or expiration).

If Institution so requests in writing, [OPM] will continue to perform all Services applicable to enrolled students under this Agreement and permit Institution to add additional Carry-Over Students to be admitted to and enrolled in courses in any Program for up to two (2) years following the date of expiration/termination.

Upon expiration or termination of this agreement, University will cease all use of [OPM] Material .. provided that the University shall have the right to continue to use the [OPM] Material for the sole purpose of permitting Students then enrolled in a Program to complete such Program.

In the first clause, students are only permitted to complete the courses they are actively enrolled in when the contract terminates. While this arrangement might work for students nearing the end of their degree programs, it is far more likely that many will still be in the early or middle stages, leaving them unable to finish their degrees as originally planned. Although the full contract specifies that the university would take responsibility for ensuring degree completion online, it does not clarify whether students would complete the same degree they initially enrolled in or how this change might impact their overall time to completion. The second clause offers a stronger safeguard by allowing students to finish their intended degrees, but only if the university submits a written request and within a specified time frame. The final clause, while somewhat vague, provides the most comprehensive protection for students by ensuring access to the necessary materials for degree completion. This approach minimizes the potential negative impacts of OPM contract termination and prioritizes student success.

In order to ensure adequate uninterrupted student access during the teach-out phase, we recommend prioritizing student success while navigating program transitions by incorporating certain contract terms. Specifically, universities should maintain terms that:

1. **Guarantee that all required courses remain accessible** to teach-out students until their degree requirements are met, including OPM platforms, materials, and support services stay operational for the full duration of the teach-out phase.
2. **Establish a reasonable timeline**, such as 150% of the program's normal duration, for students to complete their degrees.
3. **Align teach-out provisions with accreditation standards** and other requirements (e.g., state) to ensure institutional compliance and the integrity of student credentials.
4. **Require a contingency plan to address scenarios** where the OPM cannot fulfill its obligations, ensuring students can complete their programs without disruption.

Exclusivity

OPM contracts are often negotiated at the college or even program level, meaning other units within the university may be unaware of how exclusivity clauses in these agreements could restrict their autonomy. There are three primary ways that these clauses may restrict autonomy. First, exclusivity clauses prohibit the university from developing similar programs to those offered through the OPM, even if the new program is housed in a different college or targets a different student population. Second, exclusivity clauses may bar other university units from entering partnerships with competing OPM providers, regardless of the type of program they intend to launch. And third, exclusivity clauses may prevent contracting parties from discussing their contract with other units on campus, meaning two units within the same university partnering with the same OPM for different programs may have dramatically different contract terms. Exacerbating this issue, OPMs may neglect to disclose other contracts within the university, thereby disadvantaging both units in their efforts to negotiate equitable terms. These limitations can have considerable implications for institutional flexibility and long-term strategy.

The following three exclusivity clauses illustrate these points:

Institution shall not: (i) engage a third-party vendor to provide Services or services similar to the Services; or (ii) offer a program that targets the same prospective or existing student audience as the student audience for a Program.

During the term of this Agreement, if the University decides to use a third-party service provider to provide services similar to those in this Agreement for Programs other than those listed in any executed Addendum, the University will first offer the right to exclusively negotiate an Addendum for the new Program to [OPM]. If [OPM] and University negotiate in good faith but cannot reach an agreement within 60 days from the date of the first offer, University is free to contract with another service provider solely for Programs not listed in any executed Addendum.

This Agreement is mutually non-exclusive and the University reserve[s] the right to obtain the Services from any other person or entity at their sole discretion and Contractor reserves the right to enter into contracts other than this Agreement and the Orders under which Contractor provides similar services to the [University] and institutions not affiliated with [University], so long as Contractor and the University do not ... use any information obtained from the other party ... or any Orders in order to obtain or perform under those separate contracts."

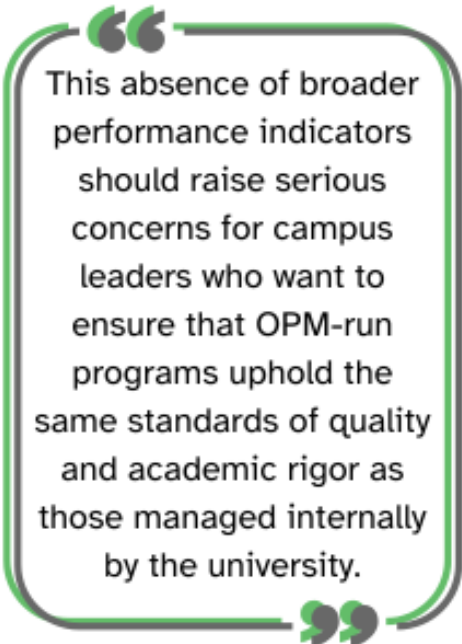
The first clause illustrates how exclusivity can broadly restrict a university's ability to offer programs. In this case, the clause prohibits both partnerships with other OPM providers and the development of similar programs, even if those programs are managed internally. The second clause is somewhat more favorable to the university, allowing it to partner with other OPM providers—but only if the contracted OPM declines to offer the desired services. The third clause takes a more flexible approach, imposing no restrictions on the university's offerings or autonomy. It also allows the OPM to provide similar programs to competing institutions. While this could raise concerns, the risk of the OPM developing directly competing programs is relatively low, given their financial interest in the success and high enrollment of the university's program. This structure provides the university with maximum flexibility while relying on the mutual incentive for program success to mitigate competitive risks.

Because exclusivity clauses often limit a university's flexibility to develop programs or engage with other OPM providers, campus leaders should carefully define and limit the scope of these clauses. We recommend that universities:

1. **Avoid exclusivity clauses that broadly restrict** the university's ability to develop similar programs internally or with other providers unless the OPM also serves exclusively to the university as a whole institution or within the designated program areas.
2. **Ensure that the terms mandate transparency in inter-campus contracts and enable communication** across university units, allowing campus leaders to openly discuss contract provisions.
3. **Incorporate mutually non-exclusive terms** that allow the university and the OPM to work with other partners, so the engagement offers strategic flexibility for both parties.
4. **Limit exclusivity to specific programs or populations** to avoid unnecessary restrictions on other academic units or initiatives.
5. **Include opt-out clauses** that allow the university to terminate exclusivity if the OPM fails to meet performance benchmarks or deliver on program objectives.

Performance

The final area of contract clauses we analyzed focuses on OPM performance. Most simply, performance is measured in terms of how many students the OPM recruits for their



This absence of broader performance indicators should raise serious concerns for campus leaders who want to ensure that OPM-run programs uphold the same standards of quality and academic rigor as those managed internally by the university.

selected programs, and enrollment figures were by far the most frequently used metric in the contracts we reviewed. Importantly, such enrollment goals tend to focus solely on the number of recruited students, rather than on the qualifications of the students. That is, these figures largely do not specify that recruited students need to be prepared to succeed in the program. Additionally, there was a noticeable lack of other performance measures; quality and rigor were rarely addressed. This absence of broader performance indicators should raise serious concerns for campus leaders who want to ensure that OPM-run programs uphold the same standards of quality and academic rigor as those managed internally by the university. Without explicit clauses outlining performance expectations—and corresponding contingency clauses for situations where these standards are not met—there may be no recourse for issues related

to poor curriculum, instruction, or other contracted services. In this section, we will examine three key areas of performance: service assessment, dispute resolution, and termination.

Service Assessment

Universities may seek a wide range of services from OPMs, such as recruitment, marketing and market analysis, instructional design, and student support services. However, most of the contracts we reviewed focused exclusively on performance clauses related to recruitment and enrollment. These clauses generally addressed how enrollment shortfalls could trigger contract termination. Given the prevalence of such clauses, we will explore this issue in more detail in a separate section later in the brief.

Due to the lack of clauses related to non-enrollment service assessment, here we present two examples from contracts that did contain such clauses:

Contractor agrees to perform its services with that standard of care, skill, and diligence normally provided by a professional organization in the performance of similar services. It is understood that Contractor may be required to perform the services based, in part, on information furnished by the University and Contractor shall be entitled to rely on such information; however, Contractor is hereby given notice that the University shall rely on the accuracy, competence, and completeness of Contractor's services in utilizing the results of such services.

Responsiveness: (1) Phone metrics – [OPM] will provide routine call metrics as part of its performance reporting (Average Speed to Answer, Abandonment Rates, Call Counts, Talk Times, etc.) ... 2) Email is acknowledged immediately upon receipt and responded to within 24 hours by email or phone. These are documented and included in the student record in Salesforce and reporting is provided based upon any open task. (3) Platform feedback is reviewed nightly and delegated to the appropriate resources for follow-up within 48 hours.

The first clause is one of the few examples that attempts to address the quality of services provided, but its vague language offers little accountability in the event of a disagreement about service quality. While it is better than having no service assessment clause at all, it fails to specify clear metrics for measuring service quality. The second clause, on the other hand, takes service performance assessment to the extreme by detailing specific metrics for every aspect of the services. For example, it outlines how quickly the OPM must respond to student inquiries, with similar levels of detail provided for all contracted services. While this level of specificity can help hold the OPM accountable, the sheer amount of detail may be impractical to manage without significant administrative oversight. Ideally, a contract should strike a balance—providing clear but less granular performance metrics that ensure accountability without overwhelming the institution with excessive detail.

Service assessment clauses offer alignment between OPMs' delivery of quality services and universities' expectations and goals for the service engagement. To improve contract terms, we recommend that universities:

1. **Establish measurable service quality standards**, such as response times and student satisfaction, to ensure accountability and maintain high performance.
2. **Require regular performance reviews and detailed reports** on key areas like recruitment, student support, and platform functionality to track progress and transparency.
3. **Tie financial incentives or penalties** to the OPM's ability to meet or exceed agreed-upon service quality benchmarks.
4. **Incorporate clear remediation procedures** for addressing performance deficiencies, with specific timelines for corrective action when standards are not met.

Dispute Resolution

Regardless of how performance is assessed, but particularly if this assessment is not specified, there are likely to be disputes between the university and the OPM over the course of the contract. As such, it is crucial for campus leaders to closely examine how disputes will be resolved, the timeframe for resolution, and who will be responsible for covering mediation or other associated costs. Clear dispute resolution procedures help ensure that conflicts can be addressed swiftly and fairly, minimizing disruption to the university's operations.

Consider the differences between the following three clauses:

Should attempt to resolve dispute amicably; if unsuccessful, matter shall be referred to non-binding mediation. Parties shall select and share costs of the mediator

If materials provided by either party infringe on the others rights, they will have the opportunity to modify the materials or obtain a license to continue using those materials. If party breaches agreement and does not cure then it will be submitted for mediation within 60 days after service of a written demand for mediation

90 days to resolve breach from the time the party was notified in writing of the breach; parties will have the options to modify materials to be non-infringing; mediation if dispute not resolved in 90 days, if not settled during 60 days of mediation, then it goes to a binding arbitrator and successful party in arbitration is eligible to recover all legal costs and fees

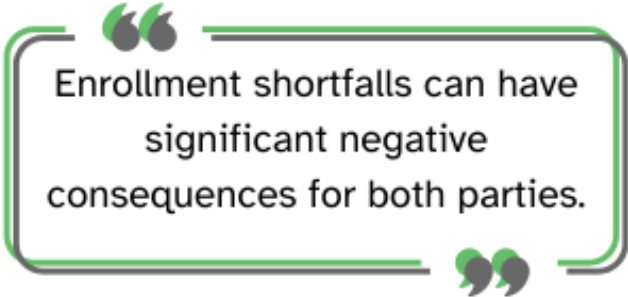
The first clause provides limited detail overall, offering little clarity on how non-binding mediation would impact the future of the partnership. While the second clause offers more specificity, it does not outline which party will be responsible for selecting and covering the costs of mediation, both of which are addressed in the first clause. The final clause is the most comprehensive, detailing both mediation and binding arbitration processes. It specifies that the successful party in arbitration will be responsible for covering the costs, which could benefit the university if they are the prevailing party. Typically, clauses for mediation and arbitration costs are split between the parties, so this structure could be advantageous if the university succeeds. However, it could also work against the university if they lose and become responsible for all related costs. Additionally, rigid timelines for dispute resolution may not always be ideal, as flexibility can be important for resolving complex issues. The best approach would be a combination of elements from these three clauses, as none fully address all the necessary details for effective dispute resolution. Campus leaders should ensure that any resolution clauses clearly define timelines, mediation and arbitration processes, and responsibility for covering associated fees to avoid ambiguity and ensure a fair process.

Given these lessons, we recommend that dispute resolution clauses should:

1. **Establish specific timelines for addressing disputes**, including mediation, arbitration, and escalation, to ensure timely resolution and avoid prolonged conflicts.
2. **Clearly define mediation and arbitration procedures**, including roles, responsibilities, and cost-sharing, to promote fairness and transparency in resolving disputes.
3. **Outline, through explicit terms, the consequences of unresolved disputes**, such as penalties, contract suspension, or termination, to ensure accountability and safeguard institutional interests.

Termination

The most common termination clauses, such as force majeure and material breach (i.e., a substantial failure to perform a contract's obligations), were standard across the contracts



Enrollment shortfalls can have significant negative consequences for both parties.

we reviewed. In this section, we focus on a key non-standard cause for contract termination: enrollment shortfalls. OPMs often promise high enrollments when a program is launched but may fail to meet these expectations. Enrollment shortfalls can have significant negative consequences for both parties—OPMs typically invest substantial upfront capital to develop and launch the program, while universities allocate

resources with the expectation of sustained growth. Given the high stakes tied to meeting enrollment targets, it is crucial to carefully examine how contracts address termination in the event of enrollment shortfalls.

Three examples illustrate how enrollment may affect termination:

[OPM] may terminate a Program at its sole option at the end of the first, second, third or fourth Enrollment Period if the Minimum Enrollment Threshold in Section 1.13 for any such Enrollment Period has not been met. [OPM] shall provide written notice to [University] exercising its right to terminate under this Section within thirty (30) days after the end of the applicable Enrollment Period.

Beginning on July 1, 2018, either party shall have the right to terminate this Agreement upon ninety (90) days prior written notice to the other party if less than a total of one hundred and fifty (150) students enroll in the Program in the prior Fiscal Year, provided that such termination right shall be waived if not exercised within ninety (90) days after the close of such prior Fiscal Year.

If the Parties mutually agree that there is insufficient enrollment in the Online Program(s) to justify its continuation

In the first clause, the OPM has the authority to terminate the program due to enrollment shortfalls, with the university receiving only a brief notice before termination procedures begin. As seen with the teach-out provisions, such clauses can negatively impact enrolled students, especially if the teach-out process does not account for the possibility of an abrupt termination.

The second clause allows both parties to cancel based on enrollment but restricts the termination window to just 90 days. While this is an improvement, it is still likely insufficient for students who are in the middle of their programs. However, since this clause measures enrollment over a fiscal year rather than a single term, it provides the university with more time to assess whether termination is imminent, allowing for better preparation before the 90-day notice is issued.

The final clause, while offering fewer details, introduces the possibility of mutual agreement to terminate, which could benefit both the OPM and the university by ensuring that both parties have a say in the future of the partnership. Additionally, the absence of a strict enrollment threshold allows the partnership to remain flexible, adapting to shifts in

enrollment patterns or market conditions that may render the original enrollment targets unachievable without necessarily jeopardizing the program.

In addressing termination clauses so they minimize disruptions to students and university operations, we recommend:

1. **Define clear notice periods and thresholds**, like minimum enrollment levels, to provide sufficient time for an orderly termination process.
2. **Spell out, with penalties, the right to terminate** for material breaches, low enrollment or lack of qualified recruits, or unmet performance benchmarks, with adequate notice to minimize disruption.
3. **Link provisions that guarantee students** can complete their programs, such as teach-out plans or continued access to course materials, after termination.
4. **Be aware of automatic renewal clauses**, and use the period before renewal to renegotiate for more favorable terms or exit the agreement.

Emerging Issues

The contract terms we have discussed provide a strong foundation for structuring OPM agreements in the current technological, regulatory, and organizational climate. There are many other more terms to consider such as Update Clauses to account for unforeseen technological developments; Change Management Clauses to address regulatory shifts, technological advancements, or business needs; or Change of Control, Assignment, or Key Personnel Change Clause permitting universities to renegotiate, terminate, or trigger some action (e.g., notification) when ownership changes, mergers, acquisitions, or critical individuals managing the OPM service leave or are replaced.

Further, emerging issues may reshape these environments in significant ways. In this section, we highlight three key emerging issues that campus leaders should consider when negotiating future contracts.

Artificial Intelligence

The rapid growth of artificial intelligence (AI) is reshaping many aspects of higher education, especially in online learning. As AI continues to evolve, it raises critical questions for the future of OPMs and how universities will manage their online programs. One key area is intellectual property: AI's ability to generate content brings up questions about who is doing the work, who owns the IP, and who should be compensated for it. Similarly, AI is capable of creating content at a rate far beyond human capability, but it nonetheless raises questions about whether it is appropriate to use this artificially

generated content in a college course. Furthermore, many universities rely on OPMs for marketing and recruitment, including lead generation. As AI becomes more capable of performing similar tasks at a significantly lower cost, the role of OPMs in these areas may be substantially reduced.

Federal Regulations

In early 2023, the Department of Education (ED) issued a Dear Colleague Letter (DCL) with regulations that would have impacted a wide range of third-party services (TPSs) in higher education. While OPMs were largely considered to be the primary focus, the vague definitions of TPSs led to the inclusion of various other education technology providers, such as learning management systems and student information systems. The DCL prompted significant backlash, including a lawsuit from 2U. In response, ED revised the letter, removing the original implementation deadline and promising updated guidance. Although ED rescinded this initial DCL,¹⁸ they recently issued a new DCL specifically targeting OPMs.¹⁹ While the 2025 DCL primarily focuses on how OPM staff represent themselves and OPM programs when recruiting students (e.g., presenting themselves as employees of the institution, describing OPM operated programs as equivalent to corollary residential programs), it nonetheless signals ED's interest in further regulating the OPM industry, and campus leaders should prepare for potential future requirements, such as those discussed in the financial reporting section.

Changes in OPM Landscape

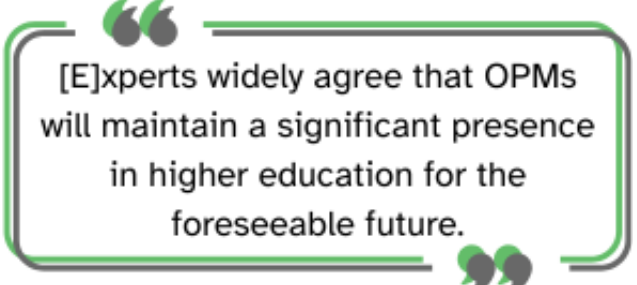
The OPM industry, which saw rapid growth in the 2010s, is undergoing significant transformation, and this trend is expected to continue. In 2023 alone, Pearson and Wiley sold their OPM businesses (Pearson to a private equity firm and Wiley to OPM competitor Academic Partnerships), 2U's CEO stepped down amidst the company's financial struggles, and Noodle announced a shift in its business model, exiting the OPM market altogether. These changes reflect the ongoing evolution of the industry, particularly among its historically dominant players. With the potential for further shifts, the OPM landscape is poised for continued transformation.

¹⁸Joint Status Report, 2024

¹⁹ Paydar, 2025

Conclusion

While the future of OPMs and their impact on university partnerships remains uncertain, experts widely agree that OPMs will maintain a significant presence in higher education for the foreseeable future. Campus leaders considering collaborations with these companies should approach the contracting process with a clear understanding of their objectives, examples of favorable terms, and a readiness to negotiate in order to align the contract with the university's unique needs and goals.



**[E]xperts widely agree that OPMs
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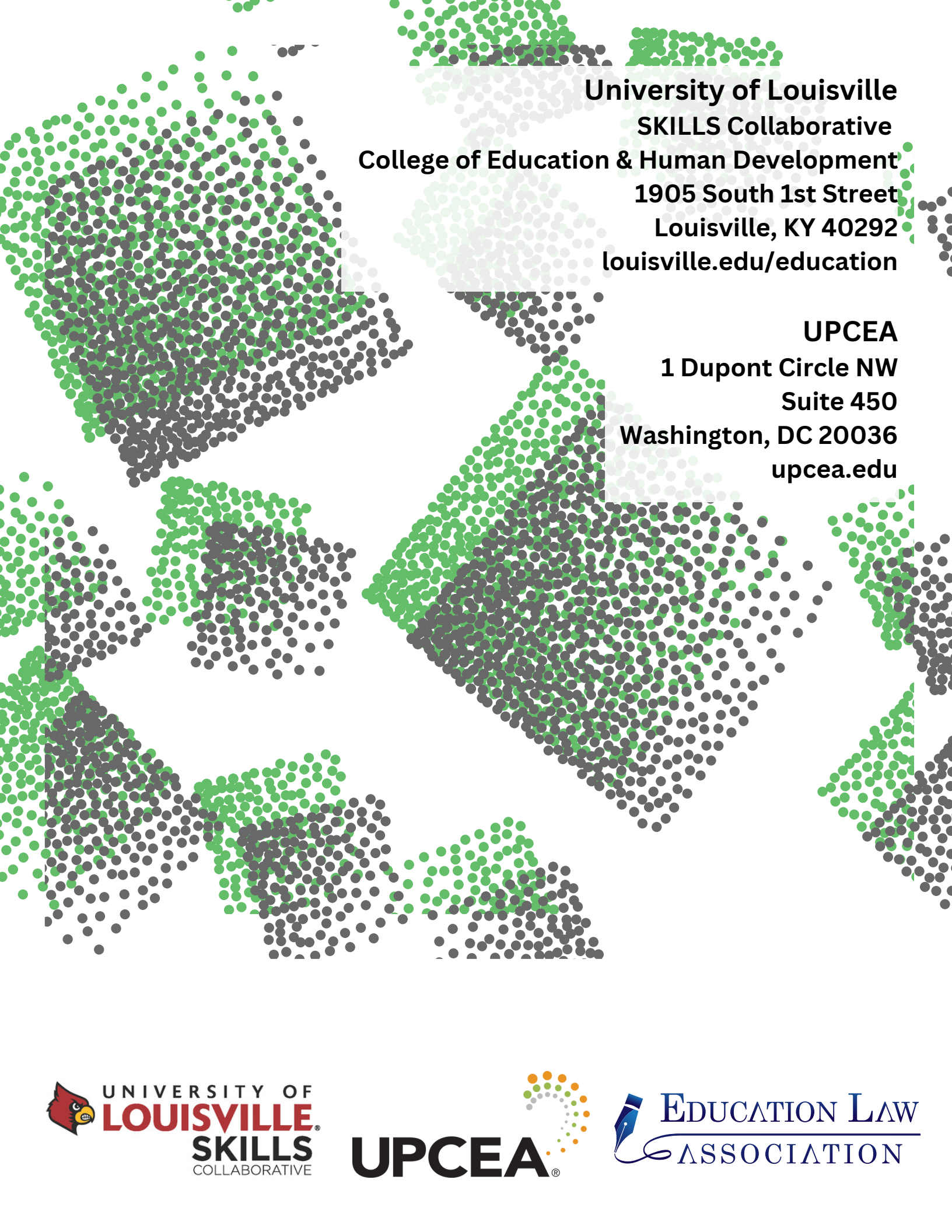
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