MASTER SERVICES AGREEMENT

Relating to the Provision of Certain Higher Education Support Services to Manage the Educational Programs, Courses or Offerings for Purdue’s Selected Schools, Colleges and Academic Units by Kaplan Higher Education

Dated as of January 1, 2019
MASTER SERVICES AGREEMENT

This Master Services Agreement (together with the Exhibits hereto, this “Agreement”), dated 1st of January 2019 (the “Effective Date”), is made by and among Iowa College Acquisition, LLC d/b/a Kaplan Higher Education, a Delaware limited liability company, with offices at 1515 West Cypress Creek Road, Ft. Lauderdale, FL 33309 (“KHE”), and The Trustees of Purdue University, an Indiana body corporate that manages and conducts Purdue University, the State of Indiana’s land-grant university, with offices at 401 South Grant Street, West Lafayette, IN 47907 (“Purdue”). The term “Party” refers to KHE and Purdue individually, and the term “Parties” refers collectively to KHE and Purdue. Capitalized terms not otherwise defined in this Agreement have the meanings set forth in Exhibit D (Definitions).

RECITALS

A. KHE has the capability to offer certain higher education support functions and services to Purdue and its various accredited institutions campuses, colleges, schools, departments, offices and/or other units (“Purdue Units”) who seek to offer online degree and/or certificate programs (the “Programs”), and such functions and services include among others, feasibility studies, program & portfolio strategy, curriculum/instructional support, editorial, marketing, advertising, student recruitment, admission support services, reporting & analytics, including deploying the technology platforms to support these functions and services; and

B. Purdue desires to engage KHE to provide (i) such support services and functions to facilitate Programs for Purdue Units, and (ii) to provide feasibility research studies to ascertain the viability of Purdue launching and offering such Programs through Purdue Units; and

C. Once identified by mutual agreement of the Parties, each Program will be added to the coverage of this Agreement through an addendum hereto that is specific to that Program; and

D. This Agreement will serve as the master agreement between the Parties to establish the general obligations of each Party and the structure related to KHE’s performance of its obligations hereunder, as supplemented from time to time by the aforementioned addenda to address special services or other specialized matters specific to each Program;

E. Accordingly, the Parties propose to enter into this Agreement to govern the provision by KHE of the services described above for certain already-identified Programs and for such additional Programs as may be launched by Purdue Units in the future; and

F. Although Purdue will from time to time act by and through Purdue Units for purposes of this Agreement, and although the Purdue Units will benefit from the services provided by KHE hereunder, the Purdue Units themselves, as divisions or components of Purdue, are not direct parties to this Agreement; nonetheless, for ease of reference, Purdue and the Purdue Units are sometimes referred to herein collectively as “Purdue Parties.” For the avoidance of doubt, Purdue University Global, Inc., which is supported by KHE through separate contractual arrangements, is not included in the definition of Purdue Parties hereunder.
TERMS AND CONDITIONS:

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINED TERMS; INTERPRETATION

1.1 Terminology. If this Agreement does not define a particular term, it will have its generally understood meaning (e.g., in the information technology or education industries) based on the context in which it is used.

1.2 Rules of Interpretation. Any headings set forth herein, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement. As used in this Agreement, unless otherwise provided to the contrary, (i) all references to days will be deemed references to calendar days unless expressly stated otherwise, and (ii) any reference to Articles, Sections, Schedules, or Exhibits, unless expressly stated otherwise, are to the Articles, Sections, Schedule, and Exhibits to the Agreement are part of the Agreement and are incorporated herein by reference. Unless the context otherwise requires, as used in this Agreement, all terms used in the singular will be deemed to refer to the plural as well, and vice versa. The words “hereof,” “herein” and “hereunder” and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” References in this Agreement to “$” will be deemed a reference to United States dollars unless otherwise specified. Words importing persons include firms, associations, partnership, trusts, corporations, and other legal entities, including public bodies, as well as natural persons. In the event of an inconsistency, ambiguity, contradiction or conflict between the terms of this Agreement, its Schedules or Statements of Work, and any amendments hereto and thereto, such documents shall be interpreted in the following order of precedence: (i) the terms of any amendment shall take precedence, (ii) followed by the terms of the Agreement, unless a Statement of Work expressly states that it overrides a specific provision of the Agreement, and then (iii) followed by the terms of the Exhibits and Schedules to this Agreement, including the Statements of Work.

2. SCOPE OF KHE HIGHER EDUCATION MANAGED AND SUPPORT SERVICES.

2.1 Engagement and Scope. Purdue hereby engages KHE to provide certain support functions and services for the Purdue online Programs, as described in one or more statements of work (each, an “SOW”) appended to this Agreement from time to time, as provided in Section 2.2 below.

2.1.1 Basic Services. In general, at a minimum, KHE shall provide the services set forth on Exhibit A uniformly to each Purdue online Program that is the subject of a SOW hereunder (the “Basic Services”).

2.1.2 Enhanced Services. In addition, for a given Program covered by a SOW, KHE may also provide: (a) any of the additional services set forth on Exhibit B hereto that are selected by Purdue and the relevant Purdue Unit, to apply to that Program, by mutual agreement, and (b) any other support services not specifically described on Exhibit B that the
Parties may mutually agree to include with respect to that Program (collectively, the “Enhanced Services”).

The Basic Services and the Enhanced Services are referred to herein collectively as the “KHE Managed Services”.

2.2 Statements of Work. The KHE Managed Services will be governed by a SOW initiated, negotiated and approved by the Parties in accordance with Section 4.1 below.

2.2.1 Elements of the SOW. In addition to identifying the KHE Managed Services to be provided for the applicable Program, each SOW shall include: (a) provisions on KHE Costs and KHE Fees that apply to such services based on economic terms negotiated by the Parties in accordance with Section 3 below and Exhibit C referenced therein, (b) deliverables, dates, and other details related to the specific Program, (c) service levels, (d) the duration of the term during which the SOW will remain in effect (including any extensions thereof), and (e) any other provisions necessary to address special circumstances unique to the Program.

2.2.2 SOW Process and Validity. To be valid and enforceable, each SOW must have the approval and signature of (i) an officer of Purdue with system-wide authority over online programs, (ii) the head of the Purdue Unit (generally the dean of the college) that will oversee the Program, and (iii) a duly authorized officer of KHE. Each SOW may be updated, supplemented or otherwise modified by the Parties from time to time through an amendment executed and delivered in accordance with Section 19.3 hereof.

2.3 KHE’s Performance. With respect to a given Program, KHE shall perform the KHE Managed Services in accordance with the service levels and/or other standards set forth in the applicable SOW for that Program from time to time.

3. COSTS, FEES AND REVENUE DISTRIBUTION.

3.1 Establishment of Baseline Framework. To enable each Party and the Purdue Units to recover their respective Program costs and to compensate KHE for its performance hereunder (including via an appropriate revenue sharing mechanism if such an approach is mutually agreed upon for a particular Program), the Parties will set forth in each SOW the economic provisions and other terms and conditions to be applied with respect to that Program, including with respect to term and termination. The Parties intend to negotiate in good faith to reach agreement on one or more baseline frameworks for this purpose, and any such framework, as and when agreed upon, will be appended to this Agreement as Exhibit C or a separately numbered sub-component thereof (e.g., Exhibit C-1, Exhibit C-2), in each case via an amendment executed in accordance with Section 19.3 hereof.

3.2 Consideration for Services. In exchange for KHE’s providing the KHE Managed Services for a given Program hereunder, Purdue will reimburse KHE for the costs of providing the services and will pay KHE the agreed upon fee (including any revenue-based fee) described in the SOW for such Program. The Parties intend that KHE and Purdue will select one of the baseline models referred to in Section 3.1 as a starting point for negotiating and establishing the economic terms of a given Program once it is identified for development and becomes the subject of a SOW. The terms “KHE Costs,” “KHE Fees,” and “KHE Managed Service Fees,” as they relate to any particular Program, shall have the meaning ascribed to them in the SOW governing that Program. Each SOW must, at a minimum, set forth the manner in which KHE is
(a) to be reimbursed for its costs, and (b) to receive its fees for the KHE Managed Services provided for in such SOW.

3.3 U.S. Department of Education. In the event the Department of Education rules or regulations prohibit tuition revenue sharing compensation for KHE Managed Services provided hereunder by KHE or otherwise prohibit or limit the Parties’ ability to perform under this Agreement, the Parties agree to negotiate in good faith a mutually agreed alternative compensation model.

4. ESTABLISHMENT OF SOW’S AND CERTAIN PURDUE OBLIGATIONS.

4.1. Acceptance and Approval – Basic and Enhanced Services.

4.1.1 New Programs—Basic Services. Consistent with KHE’s provider status described in Section 6.1 below, and other than with respect to any Program Exceptions:
4.1.3 Deliverables. In performing under each SOW that becomes effective, KHE shall perform the KHE Managed Services contemplated thereby and provide, prepare and submit the Deliverables required to be delivered thereunder, in each case in accordance with applicable timelines and critical dates identified for various stages or phases described in the SOW.

4.1.4 Pending SOWs. The Parties acknowledge that several proposed SOWs are under discussion at the time of entering into this Agreement including SOWs related to certain online programs at Purdue Units Krannert School of Management, College of Agriculture, and Purdue Northwest.

4.2 Purdue Policies. With respect to the Programs covered by active SOWs hereunder, Purdue shall deliver to KHE in writing the policies, procedures, standards, certifications, forms and/or filings of Purdue that are applicable to KHE (and its subcontractors), the KHE Managed Services and/or any other customer service functions required for delivery of Purdue online programs generally ("Purdue Policies"). To the extent any Purdue Policy changes, and such change may impact KHE's provision of KHE Managed Services, Purdue shall provide notice to KHE of such change, and the Parties shall make the appropriate change to the KHE Managed Services and the description of same in the applicable SOW.

4.3 Purdue Reservation of Rights. In relation to the core academic functions and activities required to support, operate and manage Purdue Units that do not have Programs covered by this Agreement or an SOW hereunder, Purdue hereby reserves the right to manage, direct or operate those core academic functions and activities on its own behalf.

5. MUTUAL COOPERATION AND COLLABORATION. Each Party acknowledges that the successful and timely rendering of the KHE Managed Services will require the good faith cooperation of each Party with the other. Accordingly, each Party, in furtherance of the obligations set forth in this Agreement, will cooperate in good faith with the other, including, without limitation, by (a) providing the other Party (subject to any applicable limitation set forth herein) with all information reasonably necessary or appropriate to enable such other Party to perform its obligations hereunder; (b) making available a Party's appropriate personnel to work with the other Party's personnel consistent with any staffing plan that may be mutually identified for a particular Program; and (c) providing prompt review of materials submitted to it by the other Party and making decisions in a timely manner (in each case subject to any applicable time periods more specifically prescribed herein).

6. PROVISION OF BASIC SERVICES; EXCLUSIVITY; EXCEPTIONS.

6.1 Provider Status. During the Term of this Agreement, KHE shall be the “limited exclusive provider” of Basic Services for all new online Programs developed and launched by Purdue Units during the Term, other than with respect to Program Exceptions.
6.2 **Exclusivity; Non-Competition.**

6.2.1 **Exclusivity as to SOW-Approved Programs.** Following the Effective Date, and once a SOW is entered into hereunder and remains in effect for a given Program, KHE shall be deemed, in addition to its status described in Section 6.1, the “exclusive and sole provider” of the KHE Managed Services described in the SOW with respect to that Program, such that Purdue shall not enter into any agreement or arrangement with a third party to provide services similar to those covered by such SOW for the purpose of supporting the same Program offered by the same Purdue Unit via an alternative online channel or platform, unless KHE has elected to waive exclusivity in writing in such SOW. For the avoidance of doubt, if the SOW has not included one or more Enhanced Services within KHE’s scope for such Program, Purdue and the Purdue Unit may self-perform or procure the omitted Enhanced Service(s) from a third party for such Program.

6.2.2 **Non-Competition as to SOW-Approved Programs.** Additionally, once a SOW is entered into hereunder and remains in effect for a given Program, Purdue shall not do either of the following, unless, in either case, KHE has elected to waive the relevant restriction in writing in such SOW:

6.2.2.1 Enter into any agreement or arrangement with a third party to provide services similar to those covered by such SOW for a Purdue Unit’s proposed offering of an online program that is the same as or Substantially Similar to the Program covered by such SOW, or

6.2.2.2 Directly undertake the development, launch or promotion of any online program that is the same as or Substantially Similar to the Program covered by such SOW.

For purposes of this Agreement, Program(s) are considered “Substantially Similar” if they (i) compete for the same student population, (ii) result in the same credential level or degree (e.g., AS, BS, MS, PhD or other), and (iii) have the same six digits of their CIP Codes (as defined in Exhibit D). For this purpose, factors to be considered in determining whether programs compete for the “same student population” include program admissions requirements, the level of education completed by the target audience prior to pursuing a given program, and the similarity of marketing plans designed to reach the target audience, as determined via the channel conflict resolution mechanism maintained by Purdue in connection its unified marketing strategy for online Programs.

6.2.3 **Potential for Expanded Exclusivity for Enhanced Services.**
6.3 **Program Exceptions.** Notwithstanding anything to the contrary in this Agreement, KHE’s status as the limited exclusive provider of Basic Services for all new online Programs developed and launched by Purdue Units during the Term does not apply to Program Exceptions. The following special provisions apply to such Program Exceptions:

6.3.1 **Program Exceptions Generally.** Except with respect to Niche Programs and Previously Terminated Programs discussed below in Section 6.3.2, either Purdue or a Purdue Unit may develop, launch and promote a Program Exception without providing notice to, or affording KHE any opportunity to provide, Basic Services or Enhanced Services with respect to such Program Exception.

6.3.2 **Niche Programs and Previously Terminated Programs.** In the event Purdue or a Purdue Unit proposes to develop and launch a Niche Program or a Previously Terminated Program during the Term, there will be a presumption that KHE will not be entitled to be the provider of Basic Services for either of those types of Program Exceptions;
7. NON-SOLICITATION; NON-HIRE. During the Term, and for one (1) year following expiration or termination of this Agreement, (i) without the approval of a Party ("Employer Party"), the other Party will not, directly or indirectly, solicit for employment any directors, officers, management level employees, or other employees of the Employer Party (collectively “Employee Group”); and (ii) will not hire any member of the other Party’s Employee Group who serves as a director or management level employee or who interfaces with the other Party under this Agreement or possesses specialized skill or know-how required by the Employer Party to operate its business, whether in connection with this Agreement or otherwise, without first notifying, consulting with and receiving, prior approval from, the other Party. Notwithstanding the foregoing, the consideration of persons responding to classified advertisements in newspapers, periodicals, Internet bulletin boards, or other publications (print or electronic) of general availability or circulation shall not be deemed a breach of the prohibition on solicitation under this Section, unless the advertisement and solicitation is undertaken as a means to circumvent or conceal a violation of this provision; but in no event shall the other Party be permitted to hire any member of such Party’s Employee Group except as authorized by this Section.

8. INTELLECTUAL PROPERTY AND PROPIETARY RIGHTS.

8.1 License of Certain Purdue Marks. Purdue grants the following licenses under this Agreement:

8.1.1 Grant of License. Purdue hereby grants to KHE a limited, nonexclusive, nontransferable, royalty-free, fully paid-up, and non-assignable license to use, during the Term, the Purdue academic trademarks and logos (including Purdue component co-brand academic logos) in each case, as directed by Purdue, solely in connection with the exercise of KHE’s rights and performance of its obligations under this Agreement.

8.1.2 Trademark Protection. KHE agrees, as applicable, to the following: (i) Purdue, as the licensor above, owns and will continue to own all right, title and interest in and to the trademarks and logos Purdue is licensing to KHE above, and the Parties agree that any goodwill in Purdue’s trademarks, logos and trade dress that may arise in connection with this Agreement shall vest in Purdue immediately upon its coming into existence; (ii) KHE, as the licensee above, shall execute, at no charge or expense to Purdue, any documents necessary in the reasonable judgment of Purdue to vest all rights described in clause (i); (iii) KHE agrees that, during the Term and after the expiration or termination of this Agreement, it will not directly or indirectly contest, or aid in contesting, the validity or ownership rights of Purdue in the Purdue Marks (as defined herein) or take any action whatsoever in derogation of the property rights in such Purdue Marks; (iv) KHE agrees to observe all such requirements with respect to trademark notices, fictitious name registrations, and the display of the legal name of Purdue or other identification of the Purdue Marks as Purdue may direct; and (v) KHE agrees that it will promptly inform Purdue of any action by third parties, which comes to its attention, which in any way infringes or is reasonably likely to infringe on Purdue’s rights, or impair the validity, scope or title of Purdue, in the Purdue Marks. NO PARTY SHALL TAKE ACTION AGAINST SUCH
THIRD PARTIES, WHICH IS NOT DIRECTED IN WRITING, OR APPROVED IN ADVANCE BY PURDUE.

8.2 Purdue Marks Generally. All rights in the Purdue's Parties' trademarks, names, logos, product or service names and any other identifying names or marks, including co-branded marks of Purdue Units and color schemes and typography customarily associated with Purdue's trade dress ("Purdue Marks") shall remain exclusively the property of Purdue.

8.2.1 KHE shall have no right, title, or interest in or to Purdue's Marks, and any goodwill arising from the use of Purdue's Marks by KHE shall inure solely to the benefit of Purdue, and ownership of such goodwill shall vest in Purdue, and otherwise hereby is assigned to Purdue, without the need for any further action by any Party.

8.2.2 Upon termination or expiration of the applicable SOW, KHE shall immediately cease any and all uses of any Purdue Marks associated with such SOW and, at Purdue's option, either return to Purdue or destroy, any material bearing any such Purdue Mark in its possession or under its control, with such destruction affirmed in writing by an officer of KHE.

8.2.3 KHE acknowledges that Purdue's Marks have established valuable goodwill and are well recognized among the respective customers of Purdue and Affiliates, and that it is of great importance that the high standards and reputation associated with the Purdue Marks be maintained. Accordingly, in its use of Purdue's Marks, KHE shall at all times maintain quality control standards that are equivalent to those standards used by Purdue in connection with the services provided under the Purdue Marks.

8.3 Third Party Materials. To the extent a Party provides the other Party access to, or use of, or uses any third party materials in connection with meeting such Party's obligations under this Agreement ("Supplier Party"), such Supplier Party shall be responsible for obtaining any consent or other rights with respect to such third party materials as are necessary to allow the Supplier Party to sublicense to the other Party the rights necessary for the other Party to perform its obligations under this Agreement or to receive the benefits to which such other Party is entitled under this Agreement. In addition, each Party shall comply with any applicable third party restrictions or limitations regarding such third party materials made known to such Party.

8.4 Work Product; Deliverables and other Intellectual Property.

8.4.1 Definitions. As used in this Agreement, the following capitalized terms have these respective meanings:

8.4.1.1 "Course Materials" - Copyrighted instructional content developed and deployed in a Program covered by a SOW, as well as associated digital module features related to the delivery of such copyrighted instructional content in a digital education format, whether developed by Purdue or a Purdue Unit (or its employees, agents or contractors) directly or jointly with KHE. Course Materials do not include KHE Work Product.

8.4.1.2 "Deliverables" - All materials, products, works, services, documentation and information that are provided to the Purdue Parties (whether by KHE, its employees, agents or contractors) as part of the KHE Managed Services or otherwise pursuant
to the terms of a SOW. Deliverables includes KHE contributions to Course Materials.

8.4.1.3 “KHE Work Product” - All discoveries, inventions, materials, computer programs, information, tools, content, data, processes, procedures, improvements, developments, trade secrets or other items (tangible or intangible) made, created, conceived, developed, prepared, produced, or discovered by KHE in the course of developing, implementing or performing its obligations under a SOW, other than any such items that are included within Deliverables or Course Materials. KHE Work Product includes KHE Method Intellectual Property to the extent embodied in KHE Work Product, as well as KHE Materials, but does not include Course Materials.

8.4.1.4 "KHE Materials" - The following are considered “KHE Materials” hereunder:

(a) Storyboards, scripts or print ads (including copy and visuals) presented to Purdue but which Purdue has elected not to produce and use in final form in a Program; and

(b) Hypertext Markup Language (HTML), which is the standard markup language/code for creating web pages and web applications, including Cascading Style Sheets (CSS) and JavaScript that are developed by KHE for to maintain the general learning management platform for Programs covered but SOWs (but not including any such items that are integrated into individual digital modules included in Course Materials); and

(c) Proprietary webpage formatting assets, such as designs, photography and typography, that are used to create the student interface for Programs covered by SOWs (but excluding any Purdue Marks, Purdue copyrightable works or other Purdue assets).

8.4.1.5 “KHE Method Intellectual Property” - Any proprietary methods developed solely by KHE and deployed in a Program covered by a SOW.

8.4.1.6 “Pre-Existing Materials” - “Pre-Existing Materials” of a Party means any materials that existed prior to the Effective Date or that were created outside of this Agreement by such Party and without any funding and/or materials provided by the other Party.

8.4.1.7 “Derivative Works” - A work based on one or more preexisting works, including a condensation, transformation, translation, modification, expansion or adaptation, that, if prepared without authorization of the owner of the copyright of such preexisting work, would constitute a copyright infringement under applicable law, but excluding the preexisting work or Intellectual Property Rights of another party.

8.4.2 Ownership and Licenses.

8.4.2.1 Purdue Ownership. In general, and except as otherwise expressly provided in any particular SOW, Purdue will own (i) all Deliverables and all Course Materials associated with Programs covered by SOWs hereunder (except to the extent Purdue policy recognizes faculty ownership of instructional copyrightable works included in
Course Materials), (ii) all of its Pre-existing Materials, and (iii) all Intellectual Property Rights in and to the same.

8.4.2.2 Work Made for Hire. Without limiting the generality of the foregoing, all Deliverables and Course Materials (except as may be otherwise provided by Purdue policy on faculty ownership of instructional copyrightable works) shall be owned by Purdue and considered to be works made for hire (as that term is used in Section 101 of the Copyright Act or other applicable Law). Subject to KHE’s rights in KHE Work Product, KHE will not challenge the validity of Purdue’s rights in the Deliverables. KHE releases any and all rights it may have in the Deliverables (other than to the extent KHE Work Product is incorporated therein), now or in the future, including any copyrights, mask work right, or other Intellectual Property Rights, and agrees that the Deliverables are works made for hire. KHE agrees that if the Deliverables may not be considered works made for hire under 17 U.S.C. §§101 and 201(b), KHE hereby assigns all rights it may have in the Deliverables (other than any KHE Materials incorporated therein and licensed to Purdue pursuant to Section 8.4.2.3 below) and shall, without further consideration, execute any documents and take any other actions reasonably requested by Purdue to effectuate the purpose of this Section, including any and all applications, assignments and other instruments that Purdue shall deem necessary or convenient in order to assign and convey to Purdue the sole and exclusive right, title and interest in and to such Deliverables and to effect Purdue’s ownership of all Intellectual Property Rights therein. KHE will render reasonable aid and assistance to Purdue with respect to any claims or litigation pertaining to such Deliverables, and all costs and expenses reasonably incurred by KHE at the request of Purdue in connection with any such action shall be borne by Purdue. To the extent legally permissible, KHE irrevocably waives any and all moral rights or any rights to similar effect in any country or at common law that KHE may have with respect to the Deliverables to the extent those rights have not been assigned above or licensed pursuant to Section 8.4.2.3 below.

8.4.2.3 KHE License. To the extent any KHE Work Product is integrated into the Deliverables or is necessary for the use and enjoyment of the Deliverables, KHE hereby grants the Purdue Parties and its Affiliates, and their respective successors and assigns, a worldwide, fully paid-up, perpetual, non-exclusive license to the KHE Work Product, with the right to use such KHE Work Product for so long as it remains embedded in such Deliverables or is required to enjoy and/or use such Deliverables.

8.5 Reports. If KHE is commissioned to create and deliver a report as part of any KHE Managed Services prescribed by a particular SOW, such a report shall be considered a Deliverable owned by Purdue; provided, however that if the form or template KHE uses to produce such a report is a KHE Work Product, KHE will retain ownership of the form or template, but it hereby grants to Purdue, its successors and assigns, a worldwide, irrevocable, nonexclusive, perpetual, paid up right and license to use, execute, reproduce, display, perform, modify, distribute, transmit and otherwise exploit such report template, externally and internally, by any means now known and hereafter devised, solely as integrated in and necessary for the use of the Deliverable.

8.6 Reservation. Each Party retains exclusive rights to its Pre-Existing Materials and other owned materials not expressly licensed pursuant to this Agreement. Nothing contained in this Agreement shall restrict either Party from the use of any general ideas, concepts or know-how which either Party, individually or jointly, develops or discloses under this Agreement, provided
that in doing so such Party does not breach its obligations to the other regarding confidentiality or infringe or misappropriate the Intellectual Property Rights of the other Party or any third party.

8.7 Derivative Works. Purdue will own any and all Derivative Works based upon or that incorporate the Deliverables and Course Materials. KHE will own any and all Derivative Works based upon or that incorporate the KHE Work Product (including KHE Materials). Nothing in this Agreement shall be construed to restrict or limit KHE in any way from developing similar designs, processes, content or services with other third parties, so long as such works do not violate Purdue’s rights, including those expressly recognized herein.

8.8 Ownership and Use of Lead Data and Other User Information.

8.8.1 Lead Data; Purdue Access and License. All marketing, campaign, and other data related to inquiries from prospective Users who do not enroll as Purdue students in a Program within 60 days of initial inquiry, as between the Parties, shall be owned by KHE (the “Lead Data”). Upon the request of Purdue, made with reasonable advance notice, KHE will afford Purdue reasonable access to Lead Data (on an aggregated, anonymized basis) for the purpose of conducting analytics designed to evaluate and improve the Purdue Parties’ performance in such areas as student access, recruitment and retention in Programs. In addition, and notwithstanding anything in the foregoing to the contrary, KHE hereby grants to Purdue a perpetual, royalty-free, non-transferable license to use such Lead Data (including the right to access, view, store, copy, use, process, edit, modify and adapt) that relates to students who enroll at Purdue.

8.8.2 User Information as Purdue Parties’ Data. Conversely, once a User enrolls at any Purdue Unit, Purdue shall consider that User Information as Purdue Parties’ Data, as defined under Section 9.3 of this Agreement below. However, should that same User subsequently withdraw from or complete a Purdue Unit Program, then Purdue shall provide KHE with a worldwide, fully paid-up, perpetual, non-exclusive license to use and access that User Information immediately after such User is no longer enrolled at a Purdue Unit.

9. DATA SECURITY, OWNERSHIP AND PRIVACY.

9.1 Privacy Statement & Policies. Any new marketing websites developed by KHE will be governed by Purdue’s privacy policy and Purdue’s terms of service applicable to the Purdue Parties in which website resides, as such privacy policy and terms of service are appropriately supplemented for such websites. KHE must provide a link to the applicable Purdue Parties’ privacy policy and terms of service on all pages of the newly developed website(s) in a manner that makes such statements readily accessible to Users.

9.2 Ownership of User Information. Unless otherwise agreed to under this Agreement, all User Information shall be the sole property of the Purdue Parties.

9.3 Ownership, Permitted and Restricted Uses of Purdue Data. Except as otherwise agreed to in this Agreement, Purdue Parties’ Data is and will remain the property of Purdue. Without Purdue’s approval (to be granted in its sole discretion), Purdue’s Data will not be: (a) used by KHE other than as required to provide the Services; (b) disclosed, sold, assigned, leased or otherwise provided to third parties by KHE; (c) monitored, analyzed, individualized, anonymized, aggregated, stored, or copied, other than as required to provide or in connection with the Services pursuant to this Agreement; (d) commercially exploited in any form (including any
individualized anonymized, or aggregated form) by or on behalf of KHE, or (e) use User Information in violation of any applicable law, rule or regulation, or any applicable Purdue Parties’ privacy policy. KHE hereby irrevocably assigns, transfers and conveys to Purdue without further consideration all of its and their right, title and interest in and to Purdue Parties’ Data (if any). Upon request by the Purdue Parties, KHE will execute and deliver any documents that may be necessary or desirable under any law to preserve, or enable the Purdue Parties to enforce, their rights with respect to Purdue Parties’ Data. “Purdue Parties’ Data” means all data and information, including any database information (including personal data and the confidential and proprietary data and information of the Purdue Parties, provided to KHE, in oral, written or electronic form, which Purdue Parties’ Data shall include, financial, business and technical data and information, specifications, samples, reports, business plans, forecasts, current or historical data, computer programs, documentation, market research, trade secrets, notes, analyses, compilations, studies, interpretations, and similar information) submitted to KHE or KHE representatives or agents by or on behalf of the Purdue Parties or the Purdue Parties’ representatives or agents under this Agreement. Purdue Parties’ Data may include information relating to the Purdue Parties’ students, former students and employees, technology, operations, facilities, consumer markets, products, capacities, systems, procedures, security practices, research, development, business affairs and finances, regulatory compliance, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter, patents and other intellectual property and proprietary information. All data collected from the Purdue Parties’ own website(s) will only be used for the Purdue Parties’ own campaigns during the term of the Agreement and will not be used with any other third parties unless Purdue has given its prior written consent. KHE will comply with all applicable laws in collecting, storing and using data and will adopt advertising industry best practice, for example, an unobtrusive link may be included to provide users with information about the technology being used within websites used for the purpose of delivering Programs.

9.4 Data Security.

9.4.1 Data Security - Security Policies and Safeguards. KHE shall abide by and maintain procedures and other safeguards against the loss, theft or other unauthorized access or alteration of Purdue Parties’ Data and other Purdue Parties’ property in the possession or under the control of KHE or to which KHE has access. For the avoidance of doubt, the Parties agree that, except as necessary to provide the KHE Managed Services, KHE will not process personal data on behalf of the Purdue Parties, and the Purdue Parties shall not provide such data to KHE. KHE shall not be responsible with respect to any related requirements herein to the extent of any inadvertent disclosures by the Purdue Parties of personal data (provided, if KHE has actual knowledge that it has received personal data in error, KHE will either immediately return such data to the Purdue Parties or delete such data from its systems).

9.4.2 KHE Access to Purdue Parties’ Data. During the Term, KHE Personnel will continue to have access to the Purdue Parties Data if they meet the following criteria: (i) the KHE Personnel has a need to access the Purdue Parties’ Data to deliver the Services during the Term, and (ii) each of the KHE Personnel has agreed in writing to obligations of confidentiality. All combinations or passwords to such areas must be changed periodically and upon any KHE Personnel’s termination or transfer. KHE will ensure that KHE Personnel having access to Purdue Parties Data are
appropriately trained on proper data security and handling security protocols in order to safeguard such data consistent with the aforementioned confidentiality obligations.

9.4.3 **Breach of Data Security.** In the event KHE discovers or is notified of a breach of security adversely impacting the security of Purdue Parties’ Data (or KHE systems containing Purdue Parties’ Data) which has been given to KHE or a KHE subcontractor (or to which either has access), from which Services are provided, if legally permissible, KHE shall notify the Purdue Parties of any of the following events as soon as practicable, and in any event within five (5) business days, after the event:

a. breaches and compromises of Purdue Parties’ Data, which notice will be provided telephonically and/or by email until confirmation of receipt is received; and

b. any law enforcement or administrative investigation or inquiry into suspected misuse or abuse of Purdue Parties’ Data on KHE’s systems or network.

9.4.4 **Duty to Investigate.** In the event of a breach of security adversely impacting the security of Purdue Parties’ Data caused by KHE’s or its subcontractors’, or their respective personnel’s failure to comply with the requirements herein, KHE also agrees to promptly: (i) investigate such breach, (ii) use commercially reasonable efforts to cure such breach, and (iii) exercise commercially reasonable efforts to restore any lost or damaged data using generally accepted data restoration techniques generally in use by advertising agencies (at the Purdue Parties’ cost unless the breach was caused solely by KHE’s negligent acts or omissions, in which case KHE will pay the reasonable cost of the same). Any Party collecting and maintaining data in connection with the Services and the activities contemplated hereunder will ensure, by regular backups (which shall be no less frequent than daily), that all such data that is generated and/or stored in or in connection with such Party’s system or archival tapes can be restored by appropriate automated methods. Liability for the loss of data shall be limited to the typical restoration cost that would have been incurred if backup copies of the data had been made on a regular basis. If any security breach requires Purdue, under applicable Law, to make a disclosure to any third party, the Parties will cooperate in making such disclosure, including determining the content, methods, and means of such disclosure, with Purdue taking the lead role in the disclosure protocol unless applicable Law provides that KHE shall be responsible for such disclosure. KHE (and any applicable Affiliates or subcontractors) will reasonably cooperate with Purdue in formulating the disclosure, but KHE (and any applicable Affiliates or subcontractors) will not make any such disclosure at its own initiative without Purdue’s prior written consent unless KHE is legally obligated to do so, in which case KHE shall provide Purdue with as much notice as is reasonably practical under the circumstances of KHE’s required disclosure.

9.4.5 **Subcontractors.** KHE will ensure that KHE Personnel and subcontractors having access to Purdue Parties’ Data have been approved by the relationship manager for the applicable Purdue Unit and adhere to and use commercially reasonable efforts to enforce the obligations in this Section 9.
9.4.6 **Correction of Errors.** KHE will promptly give notice to Purdue of any errors or inaccuracies in the Purdue Parties’ Data and the reports of which KHE becomes aware, and shall be responsible for the costs of correcting such errors or inaccuracies in Purdue Parties’ Data and reports to the extent such errors or inaccuracies were caused by KHE or Subcontractors. At the Purdue Parties’ direction and expense, KHE will use commercially reasonable efforts to promptly correct any other errors or inaccuracies in the Purdue Parties’ Data or such reports.

9.4.7 **Return or Destruction.** KHE will: (i) promptly provide to the Purdue Parties, in the then-existing format (or other format reasonably requested by the Purdue Parties) and on the media requested by the Purdue Parties, all or any part of Purdue Parties’ Data in KHE’s possession or control and (ii) erase or destroy, in accordance with the Data Cleansing Procedures, all or any part of such Purdue Parties Data, in each case to the extent so requested by the Purdue Parties, and provide to the Purdue Parties evidence of such destruction. Notwithstanding the foregoing, KHE may retain a copy of Purdue Parties’ Data only to the extent required for compliance with applicable Laws; provided, however that any use of such Purdue Parties’ Data shall be restricted to uses that are required for compliance with applicable Laws. In accordance with the foregoing, any such archival tapes containing the Purdue Parties’ Data will be used by KHE, subcontractors and such third parties solely for backup purposes and in accordance with legal requirements, and need not be destroyed.

10. **CONFIDENTIALITY.**

10.1 **Definition.** “Confidential Information” shall mean: (a) the terms of this Agreement that are considered by a Party to be trade secrets or other proprietary information; (b) any non-public, proprietary information, intellectual property and other confidential information, including any technical and non-technical information regarding current, future and proposed business operations, products and services, including for example, information concerning research and development, financial information, procurement requirements, student and customer information and lists, business forecasts, sales information and marketing plans, descriptions, specifications and the like of a Disclosing Party, and (c) any information the Disclosing Party has received from its Affiliate(s) or a third party, which the Disclosing Party is obligated to treat as confidential or proprietary, that is provided or communicated by the Disclosing Party to the Receiving Party in connection with this Agreement, including pursuant to Section 16 (Duty to Cooperate).

10.2 **Obligations.** Each Party (in such capacity, the “Receiving Party”) acknowledges that Confidential Information may be disclosed to it by another Party (in such capacity, the “Disclosing Party”) in connection with this Agreement, and agrees to: (a) use, with respect to the Confidential Information of the Disclosing Party, the same care and discretion to prevent such Confidential Information from being disclosed, published or disseminated as it employs to avoid disclosure, publication or dissemination of its own similar Confidential Information (but in no event less than reasonable care); (b) use the Disclosing Party’s Confidential Information only for the purpose for which it was disclosed; and (c) not disclose, disseminate or provide access to the Disclosing Party’s Confidential Information to any person other than to those Affiliates, employees and agents who: (i) have a need to know it in order to assist the Receiving Party in performing its obligations hereunder, or to permit the Receiving Party to exercise its rights under this Agreement, and (ii) are legally bound by substantially the same obligations regarding Confidential Information as the Parties; provided that, the Receiving Party assumes full
responsibility for any failure by such Affiliates, employees and agents to abide by the confidentiality obligations. In addition, each of the Parties shall take commercially reasonable steps by agreement or otherwise so that their respective Affiliates, employees, and agents comply with these confidentiality provisions.

10.3 Exclusions. Notwithstanding anything to the contrary in the foregoing, Confidential Information does not include, and will not apply to, any information that the Receiving Party can demonstrate was:

a. at the time of disclosure of such information to the Receiving Party, in the public domain through no unauthorized act of the Receiving Party;

b. after disclosure of such information to the Receiving Party, published or otherwise became part of the public domain through no fault of the Receiving Party or its directors, trustees, officers, employees and agents;

c. rightfully in the possession of the Receiving Party at the time of disclosure of such information to the Receiving Party, free of any obligation of confidentiality;

d. received after disclosure of such information to the Receiving Party from a third party who had a lawful right to disclose such information to the Receiving Party; or

e. independently developed by the Receiving Party without reference to Confidential Information of the Disclosing Party.

10.4 Requests for Documents. If any Receiving Party is presented with a request for documents: (a) by any Governmental Entity or Accrediting Body, or (b) by any other Person pursuant to applicable public records laws or (c) pursuant to a subpoena duces tecum regarding any records, data or documents of a Disclosing Party, which may be in such Receiving Party's possession by reason of this Agreement, such Receiving Party must immediately give notice to the Disclosing Party, and the Disclosing Party will have the opportunity to contest such process by any means available to it, or to redact Confidential Information as provided below in this Section, before the records, data or documents are submitted to such Governmental Entity, Accrediting Body, court or other Person. The Receiving Party, however, is not obligated to withhold the delivery beyond the time ordered by the Governmental Entity, Accrediting Body or court, or pursuant to applicable public records laws, unless the subpoena or request is quashed or the time to produce is otherwise extended. In the event documents are requested pursuant to applicable public records laws, the Parties shall cooperate in producing a redacted version of the requested document(s) that is in conformance with requirements under the applicable public records law, with the Disclosing Party having the right to produce the first draft of such redacted documents.

10.5 Loss of Confidential Information. In the event of any disclosure or loss of, or inability to account for, or unauthorized use of, Confidential Information, the Receiving Party will notify the Disclosing Party immediately in writing, and shall reasonably assist the Disclosing Party in remedying the unauthorized disclosure or use.

10.6 Period of Confidentiality. Confidential Information will be subject to the terms of this Agreement until such time as it ceases to be characterized as Confidential Information under one or more provisions of this Section 10.
10.7 **Return of Confidential Information.** Each Party will, upon expiration or termination of this Agreement or otherwise upon demand, at the Disclosing Party’s option, either return to the Disclosing Party or destroy (and certify in writing to the Disclosing Party the destruction of), any and all documents (including any writing, instrument, agreement, letter, memorandum, chart, graph, blueprint, photograph, financial statement or data, telex, facsimile, cable, tape, disk or other electronic, digital, magnetic, laser or other recording or image in whatever form or medium), papers and materials and notes thereon in the Receiving Party’s possession, including copies or reproductions thereof, to the extent they contain Confidential Information of the Disclosing Party. All records in KHE’s possession pertaining to the Title IV, HEA program funds received from or on behalf of the Purdue Units and/or Purdue shall be returned to Purdue. Notwithstanding the foregoing, each Party shall have the right to retain archival copies of the Confidential Information required for compliance with applicable Law; provided, however, that any use of such Confidential Information shall be restricted to uses that are required by applicable Law.

10.8 **FERPA; GLBA.** The Purdue Parties acknowledge that, in order for KHE to perform certain of KHE Managed Services requested under this Agreement, it will be necessary and desirable for KHE to have access to personally identifiable information of students and prospective students of Purdue, and of Purdue’s employees, that is subject to the provisions of FERPA and GLBA, and/or any other applicable Laws. Purdue and KHE agree to maintain and use all such information in material compliance with the requirements of all such Laws, including taking required steps to comply with the requirements of 34 C.F.R. 99.31(a)(1) with respect to information protected by FERPA that may be disclosed to a party to whom an institution has outsourced institutional services or functions.

11. **AUDIT RIGHTS.**

11.1 **Books and Records.** Each Party shall maintain and keep accessible and available for inspection by the other Party pursuant to the audit rights set forth in Section 11.2 below all books and records relative to the obligations hereunder, including, without limitation records and supporting documentation related to each Party’s cost expenditures, calculation of fees (including, the KHE Fees) and Revenue for a period equal to the longer of: (i) three (3) years after the termination or expiration of the SOW to which the books and records relate, or (ii) such time as is required by Title IV of the Higher Education Act, as amended, or other state, federal or local laws, rules and regulations applicable to such Party’s obligations under this Agreement.

11.2 **Audit Rights.** During the Term and for two (2) years thereafter, but not more frequently than twice in any consecutive twelve (12) months period (except for examinations to ensure that a previously discovered problem is not recurring), during regular business hours and upon at least five (5) Business Days prior written notice, either Party shall provide to the other Party’s internal and/or external auditors (who shall be the audit department of a nationally recognized certified public accounting firm mutually agreed upon by the Parties, and provided that such auditor is not (i) compensated on a contingency basis, or (ii) providing cost consulting services to any Purdue Parties) access to such Party’s books and records at reasonable hours, solely to conduct an audit of such other Party’s financial records for the prior twenty-four (24) month period relating directly to cost expenditures, payment of fees or revenue distribution by such Party under the terms of this Agreement. It is understood that no audit shall take longer than one hundred eighty (180) business days and the audit shall not include, and in no event shall the auditors have access to, individual payroll and personnel files; any information relating to KHE’s other clients; fixed pricing arrangements with other clients; non-disclosed media sales; any information subject to restrictions in contracts with third parties; KHE’s IT infrastructure,
servers and systems (other than access for purposes of conducting the audit); any information relating to agreements entered into by KHE as principal (other than agreements for subcontractors or other work related to this Agreement); or any information that is subject to legal disclosure restrictions. Either Party, at its discretion, may receive, submit and/or retain documentation in an electronic/digital format. Any such audit shall take place in such Party’s primary office. The auditors shall execute a confidentiality agreement acceptable to the auditor, KHE and Purdue prior to conducting the examination. Except as expressly provided herein, all audit rights shall cease two (2) years after expiration or termination of this Agreement.

11.3 Examination Notice; Disputes. If any examination made pursuant to Section 11.2 above reveals a cost reimbursement overcharge by either Party or an overcharge of the KHE Fees by KHE, the Party that discovers the overcharge will notify the other Party of the amount of such overcharge in writing specifying the amount of the overcharge and providing the data and information necessary to support such claim (the “Examination Notice”). The overcharging Party will have a period of thirty (30) days to dispute in writing to the examining Party the findings contained in the Examination Notice. If the overcharging Party fails to dispute the findings, then the findings contained in the Examination Notice will become final and binding, and the overcharging Party shall pay the examining Party the amount of the overcharge within thirty (30) days thereafter. If the overcharging Party disputes the findings in the Examination Notice, then the Parties will work together in good faith for a period of up to thirty (30) days to seek to resolve the disputed matter, including the exchange of underlying information and records as reasonably requested, and including escalation of the matter to the Parties’ chief executives, to the extent necessary. If the Parties agree in writing to the resolution of any disputed matters during the thirty (30)-day negotiation period described above, then the terms of such written agreement shall be final and binding on the Parties with respect to such resolved matters.

11.4 Resolution. If any of the disputed matters remain unresolved at the end of the thirty (30)-day negotiation period described in Section 11.3 above, or in the case of disagreements between the Parties regarding a reconciliation or related payment, then such disputed matters shall be resolved by an Independent Accounting Firm in accordance with this Section 11.4. For purposes of this Agreement, “Independent Accounting Firm” shall have the meaning given such term in the TOSA. Within thirty (30) days after the Independent Accounting Firm has been engaged, KHE and Purdue shall each submit a written statement to the other Party and the Independent Accounting Firm identifying in reasonable detail such Party’s calculation of the disputed amount(s). The Independent Accounting Firm shall select either the calculation submitted by KHE or the calculation submitted by Purdue, based on which calculation the Independent Accounting Firm determines to be more accurate. The Independent Accountant shall submit its final written determination to the Parties within sixty (60) days after receipt of the written statements of both Parties. The Independent Accounting Firm determination made in accordance with this Section shall be final and binding upon the Parties and will not be subject to appeal, absent fraud or manifest error. Each Party shall be responsible for its own costs and fees relating to any dispute resolution under this Section, except that the cost and fees of the Independent Accounting Firm shall be the responsibility of the Party that fails to prevail in any such dispute.

12. REPRESENTATIONS AND WARRANTIES.

12.1 By Purdue. Purdue represents and warrants to and for the benefit of KHE the following:
12.1.1 Purdue University is a state-chartered land-grant university authorized by legislative authority of the State of Indiana, validly existing under the laws of the State of Indiana and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

12.1.2 The execution, delivery and performance of this Agreement by Purdue (i) has been duly authorized by Purdue, and (ii) other than as disclosed on Exhibit E, will not conflict with, result in a breach of or constitute a default under any other agreement or order to which Purdue is a party or by which Purdue is bound.

12.1.3 The Purdue Parties are responsible for the accuracy, completeness, and propriety of information concerning their organization, products, services, industry, or competitors, which the Purdue Parties furnish to KHE or approve for dissemination. The Purdue Parties shall review all materials prepared and delivered to the Purdue Parties by KHE under this Agreement to confirm that descriptions and representations, direct or implied, with respect to the Purdue Parties’ organization, products, services, industry, and competitors are accurate.

12.1.4 Purdue is and will remain in material compliance with all applicable Laws and has and will obtain all applicable permits and licenses required for Purdue to conduct its business.

12.1.5 There are no orders or judgements in effect to which Purdue is a party or is bound and which relate to or could affect this Agreement or Purdue’s ability to perform its obligations hereunder.

12.1.6 Except as otherwise expressly provided elsewhere in this Agreement, Purdue has full power and authority to grant KHE the rights granted herein as provided in this Agreement without the consent of any other party.

12.1.7 Neither Purdue nor its Affiliates are a party to, or engaged in, or, to the knowledge of Purdue, threatened with, any action which relates to or could affect Purdue or any Purdue Affiliate which could reasonably be expected to have a material adverse effect on its ability to perform its obligations hereunder, nor, to the knowledge of the Purdue Parties, other than ongoing discussions between Purdue and Wiley EDU, LLC about the nature and scope of the latter’s contractual rights and role as a Legacy Digital Education Provider, has any event occurred, or conditions exist, which would form the basis of an action.

12.2 By KHE. KHE represents and warrants as of the Effective Date and throughout the Term, and covenants throughout the Term, to and for the benefit of Purdue each of the following.

12.2.1 KHE is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

12.2.2 The execution, delivery and performance of this Agreement by KHE (i) has been duly authorized by KHE, (ii) will not conflict with, result in a breach of, or constitute a default under any other agreement to which KHE is a party or by which KHE is
bound, and (iii) is a valid and binding obligation enforceable against KHE in accordance with its terms.

12.2.3 KHE is and will remain in material compliance with all applicable Laws which relate to the general conduct of its business and the performance of this Agreement and has obtained and will obtain all applicable permits and licenses required of KHE in connection with the conduct of its business and in relation to its obligations in this Agreement.

12.2.4 KHE has security practices in place designed to safeguard Purdue Parties’ Data provided to KHE or to which KHE has access, in accordance with its own internal data security policies which include restrictions on access of Purdue Parties’ Data by KHE Personnel on an as needed basis to perform the Services.

12.2.5 All KHE Personnel performing any of the Services are bound by valid and enforceable nondisclosure obligations, and by written obligations regarding assignment of Intellectual Property Rights, and other appropriate agreements which protect the confidentiality of the Purdue Parties’ Confidential Information consistent with KHE’s obligation hereunder.

12.2.6 The Deliverables, when used by the Purdue Parties as authorized in accordance with any third party limitations or restrictions and without alteration (unless such alteration has been approved in writing in advance by KHE), do not infringe any Intellectual Property Right (other than the Purdue Marks which are the Purdue Parties’ responsibility hereunder) of any third party.

13. INDEMNIFICATION.

13.1 Indemnity by KHE. KHE will indemnify, defend and hold harmless Purdue, its Affiliates, and their respective officers, directors, employees and agents (“Purdue Indemnified Parties”) from and against any and all demands, judgments (including applicable pre-judgment and post-judgment interest, if any), awards, losses, damages, costs, penalties, expenses, claims and liabilities, including reasonable attorney’s fees, witness fees and court costs, and any other losses and liabilities of any kind or nature whatsoever (collectively, “Damages”) of, or awarded to, or settled with third parties in third-party claims or actions, and the costs of Purdue in enforcing this indemnification obligation (provided that Purdue is the prevailing party in doing so), in each case arising out of any of the following:

13.1.1 the negligent acts or omissions, or intentional misconduct, of KHE, its subcontractor or the KHE Personnel under the Agreement;

13.1.2 a breach of the representations and warranties contained in Section 12.2 or the confidentiality obligations set forth in Article 10 by KHE or its express obligations, representations or warranties under this Agreement; and

13.1.3 claims brought by KHE Personnel based on a theory that such personnel are entitled to Purdue employment benefits by virtue of their provision of KHE Managed Services to Purdue Parties, except to the extent that Purdue has represented to such personnel that they are eligible for such benefits;
provided, however, that KHE will not be obligated to indemnify, defend and hold harmless the Purdue Indemnified Parties to the extent that such Damages are the result of the negligent acts or omissions or willful misconduct of Purdue, its Affiliates or its subcontractors, or their respective personnel.

13.2 **Indemnification by Purdue.** Purdue will indemnify, defend and hold harmless KHE and its Affiliates, and their respective officers, directors, employees and agents ("KHE Indemnified Parties") from and against any and all Damages of, or awarded to, or settled with third parties in third-party claims or actions, and the costs of KHE in enforcing this indemnification obligation (provided KHE is the prevailing party), in each case to the extent arising out of any of the following:

13.2.1 the negligent acts or omissions, or intentional misconduct, of the Purdue Parties under the Agreement;

13.2.2 KHE’s use of the Purdue Marks, to the extent provided in Section 8.1.1;

13.2.3 any materials containing information or data provided or approved by the Purdue Parties and created, prepared, produced, or placed by KHE are false, deceptive, misleading, unsubstantiated, or otherwise inaccurate or improper (unless KHE has actual knowledge and fails to notify Purdue);

13.2.4 the manufacture, sale, distribution, or use of any of the Purdue Parties’ products or services violates the rights of any third parties or that the advertising, publicity, or promotion of the Purdue Parties’ products or services encourages or induces the violation of the rights of any third parties (except with respect to the representation and warranty of KHE in Section 12.2.6); or

13.2.5 the use of the Deliverables hereunder, by Purdue, any Purdue Unit, or any Affiliate, franchisee, dealer or agent, or by anyone other than KHE, violates any of KHE’s obligations under the applicable union codes or applicable production, talent, or other contracts relating to the production of commercials or advertisements; or a breach of Purdue’s confidentiality obligations set forth in Article 10;

provided, however, that Purdue will not be obligated to indemnify, defend and hold harmless the KHE Indemnified Parties to the extent that such Damages are the result of the negligent acts or omissions or willful misconduct of KHE, its Affiliates or its subcontractors, or their respective personnel.

14. **TERM AND TERMINATION.**

14.1 **Term.** The term of this Agreement (the “**Term**”) shall commence on the Effective Date. Its duration shall otherwise be coterminous with the initial term (“**Initial Term**”) of the Transition and Operations Support Agreement between the Parties dated as of March 22, 2018 (the “**TOSA**”) and shall include any Renewal Terms (“**Renewal Terms**”), as defined in the TOSA.

14.2 **Reserved.**

14.3 **Early Termination.** In the event of early termination or non-renewal of the TOSA, for any reason, this Agreement shall also terminate, unless all Parties agree in writing for this Agreement to remain in effect. In addition, at any time following the fifth (5th) anniversary of the
Effective Date and prior to the expiration of the Initial Term, Purdue may elect to terminate this Agreement by providing KHE with not less than one hundred and eighty (180) days’ prior written notice of termination, specifying therein the effective date of termination; provided, however, that the Term shall continue beyond expiration of such 180-day period for the purpose of governing any and all then active SOWs (each of which shall not be affected by the notice of termination unless otherwise expressly contemplated by its terms), and the Term shall remain in effect until such time as the last of the current SOWs expires or is otherwise terminated in accordance with its terms.

14.4 Termination of Agreement for Material Breach. This Agreement may be terminated by either Party (such Party, the “Non-Defaulting Party”) upon a material default or material breach by the other Party (the “Defaulting Party”) of the terms of this Agreement. A material breach shall include any act or omission by a Defaulting Party, which materially interferes with another Party’s performance of its obligations under this Agreement. The Non-Defaulting Party shall give the Defaulting Party written notice of such material default or breach, stating the nature thereof. If the Defaulting Party does not remedy any such default or breach within one hundred twenty (120) days after delivery of such notice by the Non-Defaulting Party (the “Cure Period”), the Non-Defaulting Party may thereafter terminate this Agreement effective immediately upon written notice or such later date as specified in the Non-Defaulting Party’s notice. Upon any termination pursuant to this Section 14.4, the Purdue Parties shall not be subject to any non-solicitation, non-competition, exclusivity or right of first refusal set forth in this Agreement. References in this Section 14.4 to a Party’s breach shall include a breach by Purdue of any Purdue obligations (with respect to which Purdue shall be responsible).

14.5 Effect of Termination.

14.5.1 General. Upon termination or expiration of this Agreement, KHE shall, at no cost to Purdue, deliver to the Purdue Parties (i) all Deliverables completed through the effective date of the termination, and all text, designs, colors, drawings, files, and other materials, including third party materials, selected by the Purdue Parties for inclusion in the Deliverables but not yet incorporated therein, and all copies thereof, in the format and medium as of the date of such expiration or termination; and (ii) all completed Deliverables and all materials that do not yet constitute completed Deliverables but that have been approved and selected by the Purdue Parties prior to the termination effective date (without including KHE Work Product except as designated herein or as is otherwise agreed by the Parties), if applicable, in each case in the format and medium in use by KHE in connection with providing the KHE Manages Services as of the date of such expiration or termination. Each of the Parties shall return or destroy the other Party’s Confidential Information in accordance with Section 10. KHE shall cease using all Purdue Marks and return or destroy materials bearing Purdue Marks in accordance with Section 8.2.2.

14.5.2 KHE Fee Adjustment

14.6 Termination Obligations.

14.6.1 Upon termination or expiration of the Agreement, other than upon a material
uncured default by KHE pursuant to Section 14.4: (i) KHE will be entitled to reimbursement of KHE Costs incurred under active SOWs through the date of such expiration or termination, and (ii) KHE will continue to receive reimbursement of KHE Costs and payment of KHE Fees (as adjusted pursuant to Section 14.5.2) under any SOWs that remain in effect notwithstanding termination of this Agreement (as contemplated by the proviso in Section 14.3).

14.6.2 Upon any early termination of this Agreement, other than upon a material uncured default by KHE pursuant to Section 14.4, KHE shall also be entitled to (i) reimbursement of any costs incurred with respect to non-cancellable written contracts entered into prior to receipt of notice of termination, and (ii) any early termination fees that are provided in individual SOWs (except to the extent that such SOWs are to remain in effect until their termination or expiration in accordance with their terms, as contemplated by the proviso in Section 14.3).

14.6.3 Purdue shall provide KHE with a written accounting no later than ten (10) business days after the completion of each semester containing accurate, complete and current information concerning all collections, deductions, and remittances by Purdue in accordance with this Section 14.6, and shall pay to KHE any residual amounts determined to be owed at that time.

14.7 Continuing Obligations and Teach-out. Without limiting any other provisions of the Agreement, the Parties shall remain liable for all obligations accruing prior to termination, including, without limitation, KHE Fees earned by KHE. In addition, in accordance with the proviso set forth in Section 14.3, this Agreement shall remain in effect for the purpose of completing any Program courses then in progress under any active SOWs and any reasonable transition period for then registered Enrollees in such courses.

14.8 Duty to Mitigate and Survival. Each Party will have a duty to mitigate damages for which the other Party is responsible. The provisions of Sections 6.2.2, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 shall survive the termination of this Agreement.

15. LIMITATION OF LIABILITY. Except as provided below, the Parties hereby agree that the total aggregate liability of KHE under or in connection with the Agreement, regardless of the form of the action or the theory of recovery, shall be limited to an amount equivalent to two (2) times the KHE Fees paid or payable as agreed in any and all SOWs under this Agreement during the twelve (12) months prior to the month in which the most recent event (before asserting the claim) giving rise to liability occurred (provided, that if such event giving rise to liability occurs during the first twelve (12) months after the Effective Date, the amount will be calculated as four (4) times the average quarterly KHE Fees paid or payable under this Agreement during the elapsed time since the Effective Date). In addition, except as provided below, the Parties agree that the total aggregate liability of Purdue under or in connection with the Agreement, regardless of the form of the action or the theory of recovery, shall be limited to an amount equivalent to two (2) times the Net Revenue received by Purdue attributable to any Programs having SOWs under this Agreement during the twelve (12) months prior to the month in which the most recent event (before asserting the claim) giving rise to liability occurred (provided, that if such event giving rise to liability occurs during the first twelve (12) months after the Effective Date, the amount will be calculated as four (4) times the average quarterly Net Revenue received by Purdue during the elapsed time since the Effective Date). IN NO EVENT, WHETHER IN CONTRACT OR IN TORT (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, WILL A PARTY BE LIABLE TO
THE OTHER PARTY UNDER THE AGREEMENT FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING LOST REVENUES, LOST PROFITS, OR CONTRIBUTION IN RESPECT OF ANY CLAIM AGAINST THE PARTY), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN BY SUCH PARTY. The foregoing limitations shall not apply to (i) any losses arising from the willful malfeasance, gross negligence or fraud of a Party, or (ii) any losses arising from the breach of confidentiality, data security or intellectual property provisions of this Agreement. For purposes of clarification, this limitation of liability is an aggregate limitation of liability for this Agreement, and all remedies provided for in this Agreement are cumulative.

16. DUTY TO COOPERATE. If a Governmental Entity, Educational Agency, or third party files any type of demand, suit, claim, action or cause of action, or commences an investigation, review, audit, or site visit against KHE or one of its Affiliates, or against Purdue or one of its Affiliates, each Party (and its respective Affiliates, to the extent applicable) shall use commercially reasonable efforts to cooperate with the other Party’s defense. Each Party (and its Affiliates, to the extent applicable) further agrees in principle to execute such joint defense agreements, on customary terms, as may be necessary or appropriate for the protection of any privilege or confidentiality in the course of cooperating with the other Party’s defense. KHE and Purdue agree to use commercially reasonable efforts to make available to the other, upon reasonable request in writing, any and all non-privileged or non-proprietary documents that either Party (or either of their respective Affiliates, to the extent applicable) has in its or their possession, which relate to any such demand, suit, claim, action or cause of action, investigation, review, audit, or site visit. This provision is not intended to waive or otherwise limit any privilege or work product protection any Party may have over any documents or other information. However, neither Party (nor any of their respective Affiliates) shall have the duty to cooperate with the other Party if the dispute is between the Parties themselves, nor shall this provision preclude the raising of cross-claims or third party claims between KHE and Purdue (or one of their respective Affiliates) if the circumstances justify such proceedings. The Parties agree that this provision shall survive the termination of this Agreement.

17. GOVERNING LAW; JURISDICTION AND FORUM; WAIVER OF JURY TRIAL.

17.1 Management Escalation. Except for a dispute, claim or other controversy that is subject to the Examination provision in Article 11 and the proposal and appeal procedures applicable to Niche Programs set forth in Sections 6.3.2.1 through 6.3.2.6, in the event of any other dispute, controversy or claim, whether based on contract, tort, statute or other legal or equitable theory (including any claim of fraud, misrepresentation or fraudulent inducement), arising out of or related to each Party’s obligations hereunder, and prior to taking formal legal action, the Parties shall: (a) work in good faith for thirty (30) days to attempt to resolve such matter, and (b) if such matter is not resolved in such thirty (30) day period, escalate the matter to the Chief Executive Officer of KHE and the President of Purdue, who will then work in good faith for thirty (30) days to attempt to resolve the matter, and following such time, if the matter has not been resolved, the Parties shall be free to pursue any legal remedy available to them.

17.2 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Indiana applicable to contracts executed and to be performed wholly within such State and without reference to the choice-of-law principles that would result in the application of the Laws of a different jurisdiction.
17.3 Jurisdiction and Forum. In any Action arising out of or in any way relating to this Agreement or the administration thereof or any of the transactions contemplated hereby, each Party irrevocably submits to the exclusive jurisdiction of the federal courts of the Southern District of Indiana (and any federal courts of appeal with respect to such courts), or, in the event the federal courts of the Southern District of Indiana do not have jurisdiction, the state courts of Marion County, Indiana (and any Indiana courts of appeal with respect to such courts) (the “Chosen Courts”), and hereby irrevocably agrees that all claims in respect of such Action may be heard and determined in the Chosen Courts. Each Party hereby irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of such Action in the Chosen Courts. Delivery of any process required by any such Chosen Court in accordance with Section 19.2 (Notices) shall constitute valid and lawful service of process against a Party, without necessity for service by any other means provided by statute or rule of court. To the extent permitted by Law, that final and unappealable judgment against any of them in any Action contemplated above shall be conclusive and may be enforced in any other jurisdiction within or outside the United States by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of such judgment.

17.4 Waiver of Jury Trial. Each Party waives trial by jury in any Action arising out of or in any way relating to this Agreement or the administration thereof or any of the transactions contemplated thereby. No Party shall seek a jury trial in any such Action and no Party shall seek to consolidate any such Action in which a jury trial has been waived with any other Action in which a jury trial cannot be or has not been waived.

18. INSURANCE. Throughout the Term, each Party shall purchase and maintain, at its expense, insurance coverage in types and amounts as is customary and reasonable for similarly situated organizations and businesses.

19. MISCELLEANOUS.

19.1 Relationship of the Parties. The Parties intend to create an independent contractor relationship and nothing contained in this Agreement will be construed to make either KHE or Purdue, or any of their respective Affiliates, partners, joint venturers, principals, agents, or employees of the other. No officer, director, employee, agent, Affiliate, or contractor retained by a Party to perform services under this Agreement will be deemed to be an employee, agent, or contractor of the other Party. Neither Party will have any right, power or authority, express or implied, to bind the other. Each Party shall be solely responsible for the fulfillment of all applicable Fair Labor Standards Act, state labor laws and other labor laws and Social Security provisions that affect the labor relationships with its personnel, either currently in force or that may be enacted during the Term, expressly discharging the other Party from any liability for the breach thereof. Each Party shall hold the other Party harmless in connection with any Tax and salaries to be paid in connection with its activity, to the extent such Tax and salaries are imposed upon such other Party under applicable Law or under the terms of this Agreement. The terms of this Agreement are not intended to cause any of the Parties or their respective Affiliates to become a joint employer for any purpose.

19.2 Notices. All notices, requests, demands and other communications permitted or required to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed conclusively to have been given: (a) when personally delivered, (b) when sent by facsimile (with hard copy to follow in accordance with sub clauses (a), (d) or (e)) during a Business Day (or on the next Business Day if sent after the close of normal business hours or on any non-Business Day), (c) when sent by electronic mail (with hard copy to follow in
accordance with sub clauses (a), (d) or (e)) during a Business Day (or on the next Business Day if sent after the close of normal business hours or on any non-Business Day), (d) one Business Day after being sent by reputable overnight express courier (charges prepaid) or (e) three Business Days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing, notices, requests, demands and communications to the Parties shall be sent to the following addresses:

If to Purdue:

Purdue University
610 Purdue Mall, Room 247
West Lafayette, IN 47907
Attn: Steven R. Schultz
Fax: (765) 496-7465
Email: schult51@purdue.edu

If the Notice pertains to a specific SOW, rather than to this Agreement in general, a copy of such notice shall be sent to the primary contact in the Purdue Unit to which such SOW pertains.

If to KHE:
Iowa College Acquisition, LLC
d/b/a Kaplan Higher Education
1515 W. Cypress Creek Road
Fort Lauderdale, FL 33309
Attn: Gregory Marino
Fax: (888) 652-6308
Email: gmarino@kaplan.edu

With a copy to:
Iowa College Acquisition, LLC
Kaplan Higher Education
550 West Van Buren Street
Chicago, Illinois 60607
Attn: David Adams
Fax: (888) 652-6308
Email: dadams@kaplan.edu

19.3 Amendment; Waiver. This Agreement (including the Exhibits and any SOW) may not be modified or amended except by an instrument or instruments in writing signed by KHE and Purdue. The failure of any Party to assert any of its rights hereunder shall not constitute a waiver of such rights and the waiver by any Party of any one breach shall not be construed as a waiver of any other or subsequent breach.

19.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns; provided, however, that no Party to this Agreement may assign its rights or delegate or subcontract any or all of its obligations under this Agreement without the express prior written consent of each other Party to this Agreement, except that KHE may assign this Agreement to another entity owned, directly or indirectly, by either KHE, Inc., Graham Holdings Company or its successor, or to a purchaser of all or substantially all of the assets or equity of KHE (regardless of the form of such
transaction). KHE shall not subcontract or assign any of its obligations hereunder without prior written consent of Purdue, however KHE shall be authorized to delegate to approved third party vendors (as disclosed in the applicable SOW) certain functions related to the KHE Managed Services, so long as KHE maintains close and direct supervision of those third party vendors. For purposes of this Section, a Change of Control will be deemed an assignment under this Agreement. Each Party shall notify the other Party in writing upon the public announcement of a Change of Control of such Party or its parent.

19.5 Third Party Rights. Nothing in this Agreement, whether express or implied, is intended to confer in or on behalf of any Person not a Party to this Agreement (and their successors and assigns) any rights, benefits, causes of action or remedies with respect to the subject matter or any provision hereof.

19.6 Public Announcements. Except as required by Law or the rules of any national securities exchange, each of the Parties shall (and shall cause their respective Affiliates and representatives to) consult with the other Parties and obtain the prior written consent of the other Parties (which consent (other than with respect to price) shall not be unreasonably conditioned, withheld or delayed) before issuing any press releases or any public statements or announcements with respect to the activities hereunder contemplated by this Agreement; provided that, prior to any such release, statement or announcement as required by Law or the rules of any such exchange, the Person required to issue the release, statement or announcement shall allow the other Parties reasonable time to comment thereon in advance of such issuance.

19.7 Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter of this Agreement and supersedes any prior discussion, correspondence, negotiation, proposed term sheet, agreement, understanding or arrangement and there are no agreements, understandings, representations or warranties among the Parties other than those set forth or referred to in this Agreement. Nothing in this Agreement is in any way intended to alter or amend the TOSA.

19.8 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to affect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

19.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to each of the other Parties. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in “.pdf” form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.
19.10 Further Assurances. Each Party shall execute such deeds, assignments, endorsements, evidences of transfer and other instruments and documents and shall give such further assurances as shall be necessary to perform such Party’s obligations hereunder.

{THE FOLLOWING IS LEFT BLANK; SIGNATURES TO FOLLOW ON THE NEXT PAGE}
IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be signed and delivered as of the date set forth below by its duly authorized representative to be effective as of the Effective Date.

PURDUE UNIVERSITY
("Purdue")

By: ____________________________
William G. McCartney
Executive Vice President, Purdue Online

IOWA COLLEGE ACQUISITION, LLC
("KHE")

By: ____________________________
Gregory Marino
Chief Executive Officer (CEO)
Exhibit A - Basic Services

1. Program & Portfolio Strategy
   - Market Research
   - Program Feasibility
   - Program Portfolio Mgmt.
   - Segment Targeting
   - Program Strategy
   - R&D

2. Curriculum/Instructional Support
   - Learning Science
   - Online Program & Course Design
   - Content & Licensing Strategy
   - Curriculum Development
   - Assessment
   - Faculty & Staff Training

3. Student Recruitment
   - Marketing
     - Brand Positioning
     - Digital & Social Media
     - Awareness and Consideration Building
     - Alumni Relations
     - B2B
   - Admissions
     - Admissions Policy
     - Admissions Plan and Approach
     - Inquiry Routing and Mgmt.
     - Application Decision
     - Enrollment Application and Document Collection
     - Onboarding and Orientation

4. Student Support
   - Library Services
   - Student Advising
   - Tutoring
   - Clubs & Honor Societies
   - Student Relations
   - Retention Services

5. Technology Stack
   - CRM Strategy
   - Application Development
   - Cloud Migration Support
   - Career Services
   - Telephony Strategy
   - Project Mgmt.
   - Learning Mgmt System (LMS)
   - Digital Books

6. Reporting & Analytics
   - Insight & Analytics
   - Operational Excellence
   - Quality Assurance
   - Online Training (HR)
   - Employee Relations
   - Titles IV, VII, X, FERPA & COPA
   - State Licensing, Filings & Relations
   - Compliance

7. Compliance & Human Resources
   - Faculty/Lecturer Recruitment
   - Military Compliance
   - Regional & Programmatic Accreditation
   - State Licensing, Filings & Relations
   - Compliance
## Exhibit A: Basic Services

<table>
<thead>
<tr>
<th>Program and Portfolio Strategy</th>
<th>Basic Services</th>
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<tr>
<td></td>
<td>▪ Market Research</td>
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<td></td>
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<th>Student Recruitment</th>
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<td>▪ B2B and B2I Sales Team Organization (Joint)</td>
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<td>▪ Public Relations &amp; External Communication</td>
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<td>▪ Web and Marketing Operations</td>
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<td>▪ Admissions Team and Approach</td>
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<td>▪ Operational Excellence</td>
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## Exhibit B: Enhanced Services

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<tr>
<th>Program and Portfolio Strategy</th>
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<tr>
<td>- Program Portfolio Management</td>
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<td>- Applications Development</td>
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<td>- Career Services</td>
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EXHIBIT C - ECONOMIC MODEL FOR COSTS, FEES & REVENUE DISTRIBUTION

[to be appended in accordance with Section 3.1]
EXHIBIT D – DEFINITIONS

1. “Action” means any action, claim (including any cross-claim or counterclaim), lawsuit, complaint, charge, arbitration, litigation, proceeding or hearing by or before a court, Governmental Entity or arbitral tribunal, whether at law or in equity.

2. “Adjacent” means, with respect to a description of Programs, any two Programs offered by a given Purdue Unit that have the same first six digits in their CIP Codes.

3. “Affiliates” means, with respect to any entity, any other entity that directly or indirectly Controls, is Controlled by, or under common Control with such entity.

4. “Agreement” has the meaning in the preamble.

5. “Audit” means KHE’s and Purdue’s rights as described in Section 11.2 of the Agreement.

6. “Basic Services” has the meaning given in Section 2.1 and Exhibit A of the Agreement.

7. “Books and Records” has the meaning given in Section 11.1 of the Agreement.

8. “Business Day” means any day other than a Saturday, Sunday or a day on which commercial banks in New York, New York are authorized or obligated by law or executive order to remain closed.


10. “Chosen Courts” means the forum and venue where each Party irrevocably submits to the exclusive jurisdiction of the federal courts of the Southern District of Indiana (and any federal courts of appeal with respect to such courts), or, in the event the federal courts of the Southern District of Indiana do not have jurisdiction, the state courts of Marion County, Indiana (and any Indiana courts of appeal with respect to such courts) to adjudicate any dispute, claim or Action under the Agreement.

11. “CIP Codes” mean the Classification of Instructional Programs codes based on the classification system established by the National Center for Education Statistics (NCES) and published in 2010, as amended from time to time.

12. “Confidential Information” has the meaning given in Section 10.1 of the Agreement.

13. “Cure Period” has the meaning given in Section 14.4 of the Agreement.

14. “Damages” has the meaning given in Section 13.1 of the Agreement.

15. “Data Cleansing Procedures” means, (a) with respect to electronic data (including without limitation data stored on magnetic and/or optical devices or media), the procedures that ensure the complete, permanent and irreversible destruction of such data stored electronically through either of the following methods: (1) the complete, permanent and irreversible physical destruction of the device or media on which the data is stored with a cross-cut shredder (that shreds to 1/8” x 13/16” or 1/8” x 7/8” or ½” x 1

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1/8” or 1/8” x 3 1/8” dimensions); or (2) electronic “wiping” of the data consistent with U.S. Department of Defense Directive 5220.22-M which includes, among other things, a complete, seven-pass wiping system.

16. “Defaulting Party” means the Party found to be in material default or material breach by the Non-Defaulting Party.

17. “Deliverables” has the meaning given in Section 8.4.1.2 of the Agreement.

18. “Derivative Work” has the meaning given in Section 8.7 of the Agreement.

19. “Disclosing Party” has the meaning given in Section 10.2 of the Agreement.

20. “Early Termination Fee” has the meaning given in Section 14.6 of the Agreement.

21. “Educational Agency” means any Person, whether governmental, government chartered, private, or quasi-private, that engages in granting or withholding approvals for, or otherwise regulates, postsecondary institutions, their agents or employees in accordance with standards relating to performance, operation, financial condition or academic standards of such institutions, and the provision of financial assistance to such institutions or students attending such institutions, including ED, any Accrediting Body, the Higher Learning Commission, the U.S. Department of Veterans’ Affairs and state educational agencies.

22. “Enhanced Services” has the meaning given in Section 2.1 and Exhibit B of the Agreement.

23. “Effective Date” has the meaning given in the Preamble.

24. “Enrollees” means those Purdue Students that enroll in any one of the Purdue Programs, courses or offerings.


26. “GLBA” means, collectively, the Gramm Leach Bliley Act, 15 U.S.C § 6801 et seq., and its implementing regulations, as each may be amended from time to time.

27. “Governmental Entity” means any court, administrative agency, commission or other governmental authority, body or instrumentality, supranational, national, federal, state, provincial, local, municipal, domestic or foreign government or governmental or regulatory authority or any self-regulatory authority or arbitral or similar forum of any nature, including any agency, branch, bureau, commission, department, entity, official or political subdivision, whether domestic or foreign, including any Educational Agency.

28. “HTML” is the standard markup language for creating web pages and web applications, Hypertext Markup Language.

29. “Initial Term” has the meaning given in Section 14.1 of the Agreement.
30. “Intellectual Property Rights” means any rights, titles, and interests, whether foreign or domestic, in and to any and all trade secrets, patents, copyrights, service marks, trademarks, know-how, or similar intellectual property rights, as well as any and all moral rights, rights of privacy, publicity, and similar rights of any type under the laws or regulations of any governmental, regulatory, or judicial authority, foreign or domestic.

31. “JavaScript” means an object-oriented computer programming language commonly used to create interactive effects within web browsers.

32. “KHE Indemnified Parties” has the meaning given in Section 13.2 of the Agreement.

33. “KHE Materials” has the meaning given in Section 8.3.1 of the Agreement.

34. “KHE Personnel” means KHE employees, contractors, vendors or consultants, as authorized by KHE from time to time.

35. “KHE Work Product” has the meaning given in Section 8.4.1.3 of the Agreement.

36. “KHE” shall mean Kaplan Higher Education, LLC, a Delaware limited liability company.

37. “KHE Costs” has the meaning given in Exhibit C to the Agreement.

38. “KHE Fees” has the meaning given in Exhibit C to the Agreement.

39. “KHE Managed Services” has the meaning given in Section 2.1 of the Agreement.

40. “KHE Managed Service Fee” has the meaning given in Exhibit C to the Agreement.

41. “Law” means any law, statute, rule, regulation, ordinance, order, code, arbitration award, judgment, decree or other legal requirement of any Governmental Entity or Educational Agency, applicable to a Party.

42. “Lead” means an individual who Kaplan has reason to believe is interested in Purdue Units’ education programs, courses or offerings.

43. “Lead Data” has the meaning given in Section 8.6.1 of the Agreement.

44. “Legacy Digital Education Provider” means various digital education entities with which Purdue has contracted prior to the date of this Agreement.

45. “Net Revenue” has the meaning given in Exhibit C to the Agreement.

46. “Niche Program”

47. “Non-Defaulting Party” means the Party terminating the agreement for material breach of the Defaulting Party.
48. “Parties” means KHE and Purdue, collectively.

49. “Party” means either KHE, or Purdue, as the case may be.

50. “Previously Terminated Program” means (i) a Program that was previously the subject of a SOW entered into under this Agreement but that has subsequently been terminated early in accordance with the terms thereof, or (ii) a Program that is the same as, ‘Substantially Similar’ to, or ‘Adjacent’ to a Program described in clause (i).

51. “Program” or “Programs” means a new, existing or to be developed online degree, offering or certificate programs offered (or to be offered) by a Purdue Unit.

52. “Program Exception” means an online degree program, certificate program, and/or curricular offering that would otherwise fall within the definition of ‘Program’ except for the fact that it is: (i) provided by Purdue or a Purdue Unit without the assistance of any Basic Services performed by a third party; (ii) licensed or otherwise provided directly by Purdue (for itself or on behalf of a Purdue Unit) to a corporate partner, nonprofit institution or other customer for use in the latter’s workforce training or continuing education activities; (iii) currently being provided by a Legacy Digital Education Provider under a contract with Purdue that is in effect on the Effective Date, but not including any proposed extensions or renewals thereof (which shall be subject to the provisions of Section 4.1 hereof if any such renewal or extension is proposed); (iv) a Niche Program (as defined herein); or (v) a Previously Terminated Program (as defined herein).

53. “Purdue Unit” has the meaning given in the Recitals.

54. “Purdue Marks” has the meaning given in Section 8.4 of the Agreement.

55. “Purdue Parties’ Data” has the meaning given in Section 9.3 of the Agreement.

56. “Purdue Indemnified Parties” has the meaning given in Section 13.1 of the Agreement.

57. “Purdue Parties” has the meaning given in the Recitals.

58. “Purdue Policies” has the meaning given in Section 4.3 of the Agreement.

59. “Renewal Term” has the meaning given in Section 14.1 of the Agreement.

60. “Receiving Party” has the meaning given in Section 10.2 of the Agreement.

61. “Statement of Work(s)” or “SOW(s)” has the meaning given in Section 2.2 of the Agreement.

62. “Substantially Similar” has the meaning given in Section 6.2.2 of the Agreement.

63. “TOSA” shall mean the Transition and Operations Support Agreement, dated March 22nd, 2018, entered into between Kaplan Higher Education, LLC, Iowa College Acquisition, LLC, Purdue University Global, Inc., and The Trustees of Purdue University.

64. “Term” has the meaning given in Section 14.1 of the Agreement.
65. "Third Party Materials" means all products (and all modifications, replacements, upgrades, enhancements, documentation, materials and media related thereto) that are provided under license or lease by a third party to KHE and used by KHE in the performance of the KHE Managed Services or incorporated into the Deliverables or the Work Product.

66. “User” means persons accessing websites maintained by or on behalf of Purdue and Purdue Units for the purpose of delivering Programs.

67. “User Information” means information obtained from Users.
EXHIBIT E – DISCLOSURE FOR SECTION 12.1.2

Certain contracts with Legacy Digital Education Providers overlap with the functions to be provided by KHE set forth in this Agreement, which may be considered a “conflict” but is not a violation or breach of Purdue’s contracts with the Legacy Digital Education Providers.
ACKNOWLEDGED, AGREED AND DELIVERED
PURSUANT TO SECTIONS 3.1 AND 19.3 OF THE AGREEMENT:

PURDUE UNIVERSITY
(“Purdue”)

By: __________________________
William G. McCartney
Executive Vice President, Purdue Online

IOWA COLLEGE ACQUISITION, LLC
(“KHE”)

By: __________________________
Gregory Marino
Chief Executive Officer (CEO)
ACKNOWLEDGED, AGREED AND DELIVERED
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    Chief Executive Officer (CEO)