

MASTER SERVICES AGREEMENT

between

OFFICE OF DIGITAL EDUCATION, THE UNIVERSITY OF COLORADO,

as Provider

THE UNIVERSITY OF COLORADO BOULDER,

THE UNIVERSITY OF COLORADO COLORADO SPRINGS

THE UNIVERSITY OF COLORADO DENVER and

THE UNIVERSITY OF COLORADO ANSCHUTZ MEDICAL CAMPUS

as Clients

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**Annex A** – Definitions

**Exhibits**

- Exhibit A – Program Sheet
- Exhibit B – Legal and Regulatory Compliance Standards
- Exhibit C – Services Fees Menu

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## MASTER SERVICES AGREEMENT

This **Master Services Agreement** (together with the exhibits and any future amendments hereto, this “**Agreement**”) is entered into as of this [•] day of [•], 2021 (the “**Effective Date**”) by the and between the Office of Digital Education, housed in the President’s Office at the University of Colorado (“**Provider**”), and the University of Colorado, Boulder, the University of Colorado, Colorado Springs, the University of Colorado, Denver and the University of Colorado, Anschutz Medical Campus (each a “**Client**” or the “**Client**” and collectively as the “**Clients**”). Provider and Clients may each be referred to herein as a “**Party**” and collectively as the “**Parties**”. Capitalized terms not otherwise defined in this Agreement have the meanings set forth in **Annex A**.

**WHEREAS**, Provider and each Client believes that the implementation of a relationship in which Provider will provide certain services to each Client in support of the Client delivering its academic programs in online modalities and the services to be provided by Provider to the Client hereunder will assist the Client and Provider; and

**WHEREAS**, Provider and each Client have previously entered into, or will enter into, a Program Sheet that describes, the academic programs of the Client that the Provider will provide Provider Services to the Client, the Provider Services to be provided and the compensation for such Services.

**WHEREAS**, this agreement reflects that is between ODE and the campus and there are many details that must be worked out and developed within the campus itself and these are not reflected herein,

**WHEREAS**, this agreement is not intended to modify or change anything contained in Regent Law and Policy,

**NOW, THEREFORE**, the Parties agree as follows:

### 1. Core Client Functions.

1.1.1 Sole Control Over Client Academic Matters. The Client including its faculty intend to offer courses and programs facilitated by services from the Provider. The Client including its faculty have sole and exclusive control over all academic matters related to these courses and programs ~~including minimum and maximum class size as defined in any Program Sheet.~~

### 2. Relationship of the Parties.

#### 2.1.1 Services.

2.1.1 Subject to the terms and conditions of this Agreement, Provider (directly, or through its Affiliates, subcontractors or vendors) will provide to each Client the Provider

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Services in accordance with the terms and conditions of this Agreement, the Program Sheet and any applicable Services Addendum.

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2.1.2 Subject to the terms and conditions of this Agreement, Client (directly, or through its Affiliates, subcontractors or vendors) will provide all services typically provided if not using the Provider except as specified and agreed to in this Agreement, the Program Sheet and any applicable Services Addendum.

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2.1.3 Provider shall use commercially reasonable efforts to perform the Provider Services in a timely and professional manner, and subject to Section 2.6, in accordance in all material respects with all Applicable Laws.

2.1.4 Client shall use commercially reasonable efforts to perform the Client Services in a timely and professional manner, and subject to Section 2.6, in accordance in all material respects with all Applicable Laws.

~~2.2-2.2~~ **2.2-2.2 Program Sheet.** Provider and each Client shall use their best efforts on an expedited basis to propose, discuss, settle, agree upon, execute and deliver such Program Sheets in substantially the form of **Exhibit A** as may be necessary or desirable to define the Programs that will be subject to this Agreement, when the Programs will be offered and certain aspects of the Parties' support of the Programs. Each Program Sheet shall be numbered sequentially. Each Program Sheet shall be effective only when signed by the authorized representatives of Provider and the Client, and once finalized and signed by the Parties, shall be incorporated by reference and deemed part of this Agreement. In the event of a conflict between the terms of a Program Sheet and the body of this Agreement, the terms and conditions of the Program Sheet shall control to the extent of the conflict.

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~~2.3~~ **2.3 Services Addenda.** If the Parties mutually agree to expand certain Services during a Fiscal Year in addition to those described in Sections 3 or 4 or a Program Sheet, or to discontinue or materially change such a Service during a Fiscal Year, the Parties shall enter into one or more services addenda in a mutually agreed upon form (each, a "*Services Addendum*" and, collectively, "*Services Addenda*"), which Services Addenda shall be numbered sequentially. Each Services Addendum will be effective only when signed by authorized representatives of the Parties, and once finalized and signed by the Parties, shall be incorporated by reference and deemed part of this Agreement. In the event of a conflict between the terms of any Services Addendum and the body of this Agreement or the Program Sheet, the terms and conditions of this Agreement and the Program Sheet shall control to the extent of the conflict. For the avoidance of doubt, nothing in this Agreement shall obligate any Party to enter into a Services Addendum.

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~~2.4-2.4~~ **2.4-2.4 Exclusivity.** During the Term, the Provider shall be the only third-party who directly or indirectly performs or delivers the Provider Services, or services substantially similar to the Provider Services, to Clients for the Programs listed in the Program Sheets. This term is not intended to impact nor change any existing

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campus-wide third-party relationships. Provider shall exclusively provide Services to the University of Colorado unless Provider requests and receives written permission from all of the campus Chancellors.

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**2.5-2.5 Provision of Information; Access.** Each Client shall, during the Term, make available to Provider on a timely basis after Provider's reasonable request all data, information (financial and other) and other materials within the Client's reasonable control, and provide Access to Provider's authorized personnel during normal business hours, to the extent reasonably necessary for Provider to perform each of the Services as outlined in a Program Sheet. Any such request will be subject to the terms and conditions of a Data Sharing MOU. When accessing data, information and other materials, Provider will inform Client of the specific reason(s) for accessing such data, information, and other materials.

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**2.6-2.6 Compliance with Laws.** The Parties agree that each Party shall perform its respective obligations hereunder in compliance with the Applicable Laws (including, as applicable to each respective Party, the Educational Laws listed on **Exhibit B**) that apply to such Party's performance under this Agreement and the conduct of such Party's affairs. Provider is responsible and liable for any and all actions and omissions of its employees, agents, and contractors including but not limited to breaches and/or misuse of data.

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**2.7-2.7 Services Personnel.** Provider may retain subcontractors to perform parts of the Provider Services, subject to the provisions of **Section 2.9.1.** Provider shall use personnel of reasonable skill, experience and qualifications (including subcontractors and vendors) to provide the Provider Services and will have full and complete authority to engage, dismiss, reprimand, or otherwise manage all such personnel; *provided, however*, at all times during the Term, Provider shall, in good faith, take into consideration the Client's feedback with respect to any Provider personnel performing the Provider Services. Provider will hold any contractor to the same standards and legal obligations as required in Section 2.6.

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**2.8-2.8 Client Data and Information.**

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2.8.1 Parties will execute a separate data sharing agreement with additional details, timelines, expectations for the sharing of applicable student and other data. Provider shall not retain, use, or disclose Client Data and Information that is Personal Information for any purpose (including any commercial purpose other than to provide the Services and as permitted in the Agreement), outside of the direct business relationship between Provider and each Client, or provide any Client's Personal Information to any third party.

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2.8.2 Each Client shall be the sole owner of all De-Identified or Aggregated Data Sets collected or developed by Provider in connection with the provision of the Services under this Agreement. Provider may use any Data Sets outside of the University

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of Colorado only with the explicit authorization of the Dean and/or Provost of the Program from which the data sets were obtained.

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**2.9-2.9 Responsibility for Affiliates and Subcontractors.** Each Party shall be responsible for its respective Affiliates' and third-party service providers', contractors', vendors', and subcontractors' acts, omissions and performance under this Agreement and in accord with Colorado's Governmental Immunity Act and all such acts, omissions and performance shall be deemed to be the acts, omissions, and performance by such Party. Provider will use its best efforts to timely inform Client when subcontractors are being used to provide any substantial student and faculty facing services and when changing vendors/subcontractors. Provider may only out-source an entire Provider Service Category as \* in Section 3 with approval of all of the Chancellors.

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**3. 3. Obligations and Contributions of Provider.**

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**3.1-3.1 Introduction.** Pursuant to the terms and conditions of this Agreement, Provider shall provide to Clients the specific bundle of Provider Services described below. Clients will have the sole right to approve, control, and supervise each Program's academic content and functions in accord with University's law and policies and/or accreditation requirements and policies.

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Provider will provide the Provider Services in for each Program listed in a Program Sheet commencing with the Academic Term that immediately precedes the Academic Term in which the first day of the Program Launch Term occurs unless otherwise specified in a Program Term Sheet

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Each heading marked below with an asterisk (\*), along with the Provider Services grouped under such heading, is a separate Provider Service Category for purposes of the Agreement.

**3.2-3.2 Market Intelligence\*.\*** Provider will provision each Program listed in a Program Sheet with access to a suite of market research information, which will be updated on an annual frequency or more often as Provider and Client may agree. Examples of this information will include search query data, tuition data, industry trends and demand, labor-market insights, employment data specific to select job markets, and competitive information. Intelligence shall be used for the purposes of enhancing and optimizing services and initially shared with each Client's Programs to support program development and revise Program Attributes. Intelligence may be shared in the form of dashboards, written documentation, collaborative presentations and/or performance-related meetings, as requested by the Client.

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**3.3-3.3 Marketing\*.\*** Provider will provide an in-house marketing agency service for planning, development, and implementation of strategic marketing initiatives focused on driving enrollment while maintaining or improving applicant quality. Marketing services include, but are not limited to, account management, creative,

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media planning & buying, paid social & social media and website, SEO (Search Engine Optimization), or other traditional marketing channels. This also includes services for continuous maintenance and optimization of the <https://online.cu.edu> URL. The Program ~~Term~~ Sheet will outline how any necessary approvals will be managed by the Client and the parties/levels that are authorized to approve.

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3.3.1 Provider PPC (pay-per-click) keyword strategy will be followed as outlined below:

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(a) Keyword Research and Selection: Whether the individual Program(s) have an existing pay per click (PPC) advertising campaign or not, Provider performs keyword research as a best practice to ensure the campaigns are employing the appropriate keywords. This comprehensive keyword list is always shared with the Client to ensure transparency and optimal collaboration.

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(b) Creative Development: Provider will be required to write custom and unique creative materials to maximize click-through and conversion rates. All digital advertising will clearly state "CU Online" and noting this a "fully-online program" advertisement to avoid any user confusion or cannibalization of an on-campus program advertisement pursuant to any terms in a Program Sheet

(c) PPC Management: Provider will perform ongoing campaign-performance analysis, including top-performing campaign keywords, conversions, and performance trends.

3.3.2 ~~Competing Keywords: Deleted Section~~ Geographic parameters by keyword will not be imposed or permitted by any Party. This term may be reconsidered based on actual performance requests as requested by either Party.

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3.3.3 Marketing Materials and Assets:

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(a) Provider will send Marketing Materials and/or assets to the Program Director and/or program marketing contact designated by a Client to Provider for review and approval prior to materials going "live". This also includes any necessary program/individual approvals of photos, graphics, and images.

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(b) Provider will not be required to submit approval for non-substantive alterations. This is inclusive of changes that do not change the text of such materials or Client-specific photos, graphics, or images previously approved.

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(c) Provider recognizes the significance and importance of safeguarding each Client's reputation, accreditation, state approvals, Title IV Program eligibility, and academic integrity, including but not limited to adherence with ED's misrepresentation regulations provided at 34 C.F.R. 668, Subpart F, any applicable Federal Trade Commission guidelines and other consumer marketing laws and regulations. Provider shall not, and shall instruct its contractors, subcontractors, and all

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of their employees and agents not to, make any misrepresentations, as defined in 34 C.F.R. 668, Subpart F, in carrying out recruitment and marketing services.

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**3.4 Recruitment Services\*** Provider will provide recruitment and enrollment support via proactive outreach for all initial inquiries. Provider will contact prospective students, ~~pre-qualify~~ review prospective ~~students and applicants~~ student applications relative to Client's and the Program's admissions criteria, assist prospective students with completing their application and continue engagement until students have started their designated Programs. Payments under this Agreement are for services and does not reflect nor provide any incentives or payments for enrollment goals.

3.4.1 Provider will serve as Client's initial point of contact for prospective students and applicants.

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3.4.2 Provider will guide prospective students and applicants of Client through the application process including the provision of all information regarding Client, Programs, Courses, admission criteria, and related policies, procedures, and processes.

3.4.3 Provider will develop for each Client's review and approval, protocols and content that will govern Provider's interactions with prospective students and applicants including any scripts or talking points.

**3.5 Student Support Services\*:** Provider will assign a primary point of contact (a non-academic function) to each Student to guide and serve as an easily accessible expert resource to the Student through the entirety of their Program through graduation.

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3.5.1 Provider will support Students and Clients with on-boarding activities and other designated student activities throughout their student journey.

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3.5.2 Provider shall provide tutoring service options, but the Client may opt as outlined in the Program ~~Term Sheet~~ theet.

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3.5.3 Provider shall provide options for mental health services, but the Client may opt as outlined in the Program ~~Term Sheet~~.

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3.5.4 Provider will monitor Course registrations to ensure Students are registering for their identified online Courses and escalate any registration barriers to the appropriate Client designee.

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3.5.5 Provider will help Students navigate Client policies and procedures, the student portal, and other Client-related systems with a focus on student success and persistence.

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3.5.6 Provider will ~~monitor Students' attendance and participation as it relates to utilize best practices for~~ mitigating retention risks and will make this transparent to the Client and all ~~instructors~~.

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3.5.7 Provider will advise Client's applicants and Students regarding program costs (tuition, fees, etc.) and payment options.

3.5.8 Provider will advise applicants and Students regarding financial-aid processes and options in alignment with the campus' communication and distribution schedule.

3.5.9 Provider will follow-up with Students who have outstanding financial-aid documentation to ensure completion in accordance with Client's approval.

3.5.10 Provider will escalate all specific applicant or student financial aid and bursar questions related to their account to the designated central services contact as outlined by each Client.

3.5.11 Provider will advise and/or escalate questions regarding Veterans Education Benefits and Military Tuition Assistance to the appropriate Client designee and/or website.

3.5.12 Provider will provide helpdesk services to faculty and students prior to the Program Launch Date for the first Program Sheet upon execution of the agreement and 24/7 helpdesk services within six months of that date.

**3.6-3.6 Operating Services\*\*** Provider will provide services to support all launch activity, project management, and long-term account/relationship management to ensure that each Program and Client have a centralized point of contact for all Provider Service Categories. Provider will ensure that all services are including web services are WCAG 2.0, ADA-section 504 compliant and accessible.

3.6.1 Program Discovery will provide the Clients with project management and other resources to support evaluation and planning work for identified programs.

(a) Provider will develop an initial enrollment projection model in cooperation with each Client, which will include estimates of Students matriculating into each Program over the duration of such Program.

3.6.2 Project management will be assigned to all Programs for the duration of Program launch and will work with the designated Client points of contact for coordination regarding implementation of all identified services.

3.6.3 Account management will be provided to all Programs listed in the Program Sheet.

(a) On a mutually agreed upon frequency Provider will provide business analytics and intelligence services to support each Client's business operations and optimization.

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(b) On a mutually agreed upon frequency, Provider will deliver relevant data to the Client to support planning for Course and student enrollment by the Client. Provider shall provide marketing and recruiting related data upon request by Client upon signing of this Agreement and will work to develop real-time dashboards within one year of the Effective Date. Further, Client shall have access, upon request, to any and all marketing, student success, recruiting data regarding any applicant or student.

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3.6.4 Information Technology will be delivered in collaboration with UIS (University Information Services) to support Clients with required system and data Access as well as IT-related governance.

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**3.7.3.7 Course Design and Development**\*,\* Provider will support each Client's Course design and development efforts by providing instructional designers who work with faculty to create and periodically update Courses.

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3.7.1 Each Client and Provider will mutually determine a timetable for when each Course within a Program listed in a Program Sheet is created, updated or enhanced for online delivery. This includes a timetable for assignment of faculty by Client and the staff of Provider responsible to support each such Course. Client will be responsible for the quality of each Course within a Program listed in a Program Sheet.

3.7.2 Provider will work in collaboration with Client-designated faculty to provide instructional design, development, or enhancements to Courses and multimedia development to standards, measures, and timetables subject to the terms of any Program Sheet. Provider will support, subject to the terms of any Program Sheet Client's faculty through the instructional design and development process and the pedagogy of teaching online as a part of its faculty training and development efforts. These efforts will require faculty members' participation in the ongoing refinement of the curriculum for each Course.

3.7.3 Course activities that are related to media products, Course structure and appearances including graphic design, order of operations, "look and feel" and page layout, duplication of such materials, repurposing of such information for the Program and Courses, creating and developing the online learning environment in the learning management system, ~~dissemination of such materials to Students, and providing surveys and assessments,~~ shall be subject to the prior approval of the Client. Prior to the commencement of offering any Course to Students, Provider will provide to Client faculty, at agreed upon intervals throughout the instructional design and development process, materials designed and developed for the Course for consideration to be included in the course subject to Client's faculty approval.

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3.7.4 Provider will work in cooperation with Client-designated faculty to identify and seek to secure for Client licenses for, or otherwise seek to procure, such academic resources relevant to the Programs and Courses as Client may request from time to time.

3.7.5 Should a Student require accommodations during delivery of the Courses, the Client will coordinate with disability resources and services for

accessibility needs, but Provider will be responsible for implementing and making program modifications if needed.

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**4. Obligations and Contributions of Clients.** Each Client should be responsible for and provide the Client Services described in this Section 4 unless otherwise provided in a correlating Program Sheet.

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**4.1.4.1 Marketing Materials Approval.** The Program Director (or other administrator identified by a Client to Provider) shall promptly review and approve all Marketing Materials, but not in any more than five (5) Business Days after being submitted by Provider. If a Client objects to any of the Marketing Materials, the Client and Provider will work to remedy the cause of the objection. Marketing Materials shall be deemed approved ten (10) Business Days after submitted by Provider if the Program Director does not object.

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**4.2.4.2 Changes to Programs.** Each Client understands and acknowledges that Provider will have relied upon all of the Program-specific characteristics and attributes existing at the time of execution of a Program Sheet (the "**Program Attributes**") in making its decision to enter into such Program Sheet. Provider understands and acknowledges Client, as an accredited institution of higher learning, retains all control over the Program Attributes, but these changes can negatively impact Provider and Provider's investment. In the event a Client needs to institute a material change to the Program Attributes of any Program listed in a Program Sheet, such Client shall inform Provider of the proposed change and shall work in good faith with Provider to evaluate the impact of the proposed change(s) in Program Attributes on enrollment in the Program. Program Attributes include the following; tuition/fees, credits for degree/credential, number of student entry points per year, number of courses developed, length of courses, courses removed, authorization/accreditation, and admissions criteria.

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**4.3 Design, Development, and Delivery.** Each Client shall be responsible for ensuring faculty availability to design, develop, and deliver instruction for the courses planned for each designated term and/or session for the correlating program(s) identified on the Program Sheet.

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**4.4.4.4 Admissions Processing.** Each Client shall admit students who the Client determines to be qualified Program candidates, which determination shall be at the Client's sole discretion. Each Client shall make an admissions decision with respect to each fully completed application received as promptly as reasonably possible and in accordance with timeframes included in the Program Sheet.

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**4.5.4.5 Financial Aid.** Each Client agrees to carry out, or cause to be carried out, the processing and awarding of all aspects of the financial aid process in compliance with Applicable Law. Each Client agrees that all of the awards under Title IV

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Programs to admitted students will be packaged and submitted to ED's Office of Federal Student Aid within a specified timeframe, provided by the Client, of the Client's receipt of a complete FAFSA for a student, together with all supporting materials needed to determine the eligibility of the Student to participate in Title IV Programs. Each Client shall retain complete control of all aspects of awarding and managing financial aid, including setting of budgets and disbursement schedules.

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**4.6-4.6 Academic Advising.** Each Client shall use commercially reasonable efforts to ensure the availability and participation of its faculty and staff to Provider and the Programs listed in the Program Sheet for academic advising. Each Client shall provide supportive academic counseling in requirements of the Programs listed in the Program Sheet, add/drop rules, probations, and similar matters.

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**4.7-4.7 Review of Transfer Credits of Accepted Students.** Each Client shall be responsible for evaluating transfer credits that can be applied towards Client and/or specific Program completion requirements. Each Client shall review academic credential information and the credits the prospective student has previously earned within a designated timeframe (provided by the Client) prior to and/or upon acceptance. Each Client shall also ensure the official evaluation is updated in the necessary systems to aid in student Program-completion planning.

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**4.8-4.8 Access to Client Platforms.** Each Client will provide Access to Provider to any mutually agreed upon Client Platforms so that Provider may provide marketing, enrollment-management, and Course-development services to the Client and prospective students of the Client.

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**4.9-4.9 Tracking of Student Population.** Each Client will work with Provider to ensure the requirements for tracking Students who have applied and enrolled in the Programs listed in the Program Sheet within Client's Platforms are sufficient for Provider to fulfill Provider service obligations identified in Section 3.

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**4.10 — 4.10 Student Accounts Receivable.** Each Client shall use best efforts to collect all accounts receivable of Students. These best efforts shall include actions and measures that are not in any event less than the Client employs in collecting the accounts receivables of students attending academic programs on the Client's campus. The provisions of this Section 4.10 shall not be construed to require the Client to generally commence actions to collect accounts receivable of the Students.

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**5. Mutual Obligations.**

**5.1-5.1 Review of Enrollment Goals.** On an annual basis, representatives of the Parties with authority and responsibility for enrollment goals and tuition and fee levels shall meet and confer regarding enrollment goals, tuition and fee levels, student discounts and scholarships, the number of cohorts and to evaluate potential modification to any or all of the foregoing. Each Client shall make final decisions

about enrollment goals, tuition and fee levels, scholarships and discounts and number of cohorts per academic year for each of the Programs. The Client shall consider the following input received by its representatives at the annual meetings with representatives of Provider described in this Section 5.1: market data, employment data, compensation data and such other information and data as may be provided to the Client by Provider Enrollment goals, tuition and fee levels and scholarships and discounts may be adjusted during the Term as necessary to achieve the mutual goals of the Parties.

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**5.2-5.2** **Transfer Credit Process for Prospective Students.** Provider and each Client shall mutually determine how to facilitate a prospective student transfer credit review process (these are Students who have not been formally accepted) for each of the Programs listed in a Program Sheet.

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**5.3-5.3** **Business Continuity/Disaster Recovery Plans.**

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5.3.1 With the assistance of Provider, each Client shall implement and maintain business continuity and disaster recovery plans designed to ensure continuity of the Client's normal operations, including plans for emergency response, incident management communications, crisis management, replacement and/or relocation of personnel of the Client, and recovery of the Client's systems and Client Data and Information, (as necessary) to provide the Programs ("**BC/DR Plans**"). The BC/DR Plans shall include a clear definition of and strategy for meeting recovery time and data loss objectives, and a backup/recovery location that is not dependent on the same critical infrastructure as the primary location. Such backup/recovery site must maintain the same levels of physical and access security controls as those maintained at the primary site and as required under this Agreement.

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5.3.2 Each Client will execute its BC/DR Plans upon the occurrence of a Force Majeure Event, disaster, or other event that requires execution of the BC/DR Plans in order to avoid any material interruption of the Programs. Upon cessation of a disaster or Force Majeure Event, each Client shall as soon as reasonably practicable provide an incident report detailing the reason for the disaster or Force Majeure Event, as applicable, and all actions taken by the Client to resolve the same and steps taken to prevent a recurrence.

**5.4-5.4** **Points of Contact.** The Program Sheet shall identify a Point of Contact for the Services for each of Provider and the Client. The Provider and Client may change a Point of Contact by written notice to the other. The Provider's and Client's Point of Contact shall be responsible for supervising and coordinating the performance and receipt of the Services, including using good-faith efforts to resolve any disputes or issues that may arise during the performance of the Services on a day-to-day basis. Any dispute among the Parties relating to any Services or this Agreement that is not otherwise resolved by the Points of Contact shall be addressed as provided in Section 12.3.

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**5.5-5.5** **Changes in Applicable Law.** The Parties will work together to identify the effect of changes in Applicable Law of the Programs listed in the Program

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Sheet, the Services, the obligations of each Party performed under this Agreement, and the respective operations of each Party, and each Party will give written notice to the other Parties of any such change in Applicable Law.

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**6. Services Fees; Terms and Conditions of Payment, Reporting and Records.**

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**6.1-6.1 Services Fees.** Services Fees will be outlined in Exhibit C.

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**6.2 Surplus Return.** Once Provider's Contribution Margin (Net Revenue minus all expenses) is greater than 4% on an annual basis, all surplus above 4% will be distributed to the Campuses on a pro-rata basis of revenue from Programs working with ODE from the preceding 12 months.

**6.2-6.3 Reports, Payment Timing and Reconciliation.**

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**6.2-6.3.1 Academic Term Payment.** Within a timeframe as denoted in each Program Sheet, Parties agree that Client shall

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(a) provide Provider a Client Academic Term Report for such Academic Term;

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(b) calculate the Estimated Academic Term Payment for the current Academic Term;

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(c) determine whether any payment or offset is necessary with respect to the Estimated Academic Term Payment made for the Academic Term immediately preceding such completed Academic Term by calculating the result of the Estimated Academic Term Payment made by the Client to Provider for the Academic Term immediately preceding such completed calendar month minus the Actual Academic Term Payment for such Academic Term, with any negative result representing an additional amount owed by the Client to Provider for such Academic Term and any positive result representing an amount owed by Provider to the Client (each, a "*Academic Term True Up Amount*"); and

(d) transfer an amount to Provider equal to the Estimated Academic Term Payment for the current Academic Term plus the applicable Academic Term True Up Amount owed by the Client to Provider with respect to the Academic Term immediately preceding such completed Academic Term minus (C) the applicable Academic Term True Up Amount owed by Provider to the Client with respect to the Academic Term immediately preceding such completed Academic Term (each such Academic Term payment, a "*Academic Term Payment*").

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6.2.26.3.2 Ongoing Reconciliation. The Parties shall cooperate in reconciling and adjusting Academic Term Payment amounts as shall be necessary as a result of differences between actual and estimated amounts, misapplication errors, student loan processing matters, late payments, offsets, refunds or payment mistakes, whether occurring in the current Academic Term or prior Academic Term. The Party identifying any matter requiring reconciliation or adjustment shall promptly notify the other Party, providing supporting documentation or information, and the Parties shall cooperate in agreeing on an appropriate adjustment to a pending or future Academic Term Payment amount.

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6.3.6.4 Records. Each Party shall maintain complete and accurate books and records with respect to its duties and services under this Agreement, including, without limitation, records, as applicable, reflecting billing, payments, scholarships and other deductions and write-offs. All such records shall be maintained for at least seven (7) years after the expiration or termination of this Agreement.

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## 7. Term, Termination

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7.1.7.1 Term. The initial term of this Agreement (the "*Initial Term*") shall commence on the Effective Date and, unless earlier terminated as provided in this Agreement, shall continue until ten (10) years after the last day of the Program Launch Term of the Program listed in the latest dated Program Sheet. ~~Unless earlier terminated as provided in this Agreement, or unless a Party elects not to renew this Agreement by giving the other written notice of such election not to renew at least twelve (12) months prior to the last day of the Initial Term or subsequent Renewal Term, this Agreement shall automatically renew for up to two (2) additional five (5) year terms (each additional five year term, a "*Renewal Term*" and, together with the Initial Term, the "*Term*").~~ The Term shall be determined individually for each Client so that the failure of one Client to renew the Term shall not cause the Term to end for another Client that does not provide election not to renew this Agreement.

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### 7.2 Termination of Program Sheets

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7.2.1 In the event that either Party either fails to perform its obligations under the Agreement or fails to perform the Services in respect to one or more Programs listed in a Program Sheet the aggrieved Party shall provide written notice to the other Party describing failure(s) in sufficient detail to enable remediations. In the event that a Party fails to fully cure and remediate each item issue described in a written notice described in the preceding sentence within one hundred twenty (120) days of receipt of such written notice, then the aggrieved Party may terminate the application of this Agreement to the applicable Programs. A notice to terminate services pursuant to a Program Sheet must be provided within one hundred fifty (150) days of the date that the aggrieved Party delivered the written notice described in the first sentence of this Section.

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7.2.2 If a Program fails to meet any of the performance standards as outlined in the Program Sheet (i.e. retention, net revenue) which must include timelines and metrics then the aggrieved Party may but shall not be obligated to terminate the Program Sheet in accord with Section 7.2.1. In no circumstance, may a Program Sheet be terminated in less than three (3) years after initiation of a Program under this paragraph unless outlined in a Program Sheet.

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### 7.3-7.3 Termination of an individual Client- Provider Relationship.

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7.3.1 In the event that either Party terminates more than fifty (50%) percent of the Programs listed in Program Sheets of an individual Client pursuant to this Section 7.2.1, then all of the Program Sheets of such Client may but shall not be obligated to, be terminated by either Party pursuant to Section 7.2.1 without the necessity of any further action by either Party and this Agreement in its entirety shall no longer apply to that Client.

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### 7.4-7.4 Clients' Rights for Voluntary Early Termination.

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7.4.1 The Client may elect to terminate any Program Sheet(s) or its participation in this Agreement ~~after the third complete year of any Program Sheet(s),~~ for any reason or no reason, at any time prior to the expiration of the Initial Term by giving Provider written notice of such termination and stating an effective date of termination at least (8) months following the date of such notice. If the Client gives written notice to Provider of its decision to terminate this Agreement in accordance with this Section 7, then, as a condition to such termination, on or prior to the effective date of termination, the Client shall pay to Provider the Early Termination Fee. ~~Early Termination Fee will be calculated for each Program within the Program Sheet(s) separately in the following manner: (i) if a Program is terminated prior to the third anniversary of the Program Launch Term for that Program, the summation of forecasted annual enrollments for each remaining year of that Program will be multiplied by forecasted credits per student per year for that Program, then multiplied by the current tuition rate per credit and then multiplied by 20%; or (ii) if a Program is terminated after the third anniversary of the Program Launch Term for that Program, the average enrollments from the trailing three enrollment periods (one year) for that Program will be multiplied by the number of remaining years for that Program and will then be multiplied by the average credits per student for the trailing three enrollment periods (one year) for that Program, then multiplied by the current tuition rate per credit and then multiplied by 20%.~~

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7.4.2 If a Client terminates this Agreement pursuant to Section 7.2 or 7.3, then the Client shall not be obligated to pay Provider all or any portion of the Early Termination Fee. Such Client shall be obligated to pay Provider the Services Fees described in Sections 7.5.1 and 7.5.2.

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## 7.5 Effects of Termination

7.5.1 If Provider or any Client terminates the application of this Agreement to a Program or Programs listed in a Program Sheet pursuant to Section 7.2 prior to the last day

of the Term, then such Client shall continue to pay Provider the Services Fees pursuant to the provisions of Section 6.1 with respect to Students who were ever enrolled in any Program listed in a Program Sheet in effect on the date of such termination for a period of until the first to occur of eighteen (18) months after the date of such termination pursuant to Section 7.2 or (ii) the date that all Students who were ever enrolled as of the date such expiration or termination is effective, as the case may be, in each Program listed in the Program Sheet have either graduated or withdrawn from each such Program. If Provider fails to provide services or meet Agreement requirements pursuant to 7.2, Client shall not be obligated to pay Service Fees under Teach-Out Period under section 8.1

7.5.2 Upon any termination or expiration of this Agreement, Provider shall be entitled to, and each Client shall pay, all undisputed Services Fees and other amounts due hereunder by the Client up to and through the last day of the Term applicable to such Client, as determined and payable in accordance with the terms of this Agreement. In addition to the other rights set forth herein, in the event of the termination of this Agreement, each of Provider and the Client shall take reasonable steps to provide the other with any information and records in its possession reasonably related to this Agreement requested by a Client or Provider in writing to the extent appropriate and necessary to permit the continuing business operations of each of Provider and the Client with a minimum of disruption to the Parties and the Students, each Party shall exercise reasonable efforts to return or migrate in the case of Provider, any Client IP in Provider's possession or control to the Client or its designee as reasonably directed by Client.

## 8. Teach-Out

**8.1-8.1 Establishment of Teach-Out Period.** If any Client or Provider elects to terminate or not renew this Agreement, then such Client and Provider will continue to operate as contemplated under this Agreement until the first to occur of eighteen (18) months after the date of such termination or the date that all Students who were ever enrolled, as of the date such expiration or termination is effective, as the case may be, in each Program listed in the Program Sheet have either graduated or withdrawn from each such Program (the "*Teach-Out Period*"). Client shall have the option of extending Teach-Out for one (1) additional year with six (6) months notice to Provider.

**8.2-8.2 Operations During Teach-Out Period.** During the Teach-Out Period, the Client and Provider shall continue to operate under this Agreement as if the term of the Teach-Out Period were part of the Term and shall comply with all provisions of this Agreement, except that, to the extent of any inconsistency between the terms of this Agreement and the provisions of this Section, the terms of this Section shall control. Provider will use its best efforts to work with Client on ensuring an effective transition of students, data, and information. Specifically, during the Teach-Out Period, Provider will not provide any services related to attracting new students to the Program or Programs including but not limited to Services noted in Sections 3.2, 3.3 and 3.4.

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~~9-9.~~ Intellectual Property Rights. This agreement does not dictate intellectual property policy or rights. All intellectual property rights in the Program will be handled by Regent, System, and campus-level policies.

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~~10-10.~~ Force Majeure. No Party shall be liable or in breach or default of this Agreement if and to the extent such breach or default is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, epidemics, pandemics (whether or not declared by any Governmental Entity, including the Centers for Disease Control and Prevention, the World Health Organization or any similar entity), embargoes, orders of any Governmental Entity, changes in Applicable Law, or any other cause beyond the reasonable control of such Party whether or not any such other cause is similar to any of the examples set forth above; provided the non-performing Party is without fault in causing such breach or default, and such breach or default could not have been prevented by reasonable precautions and could not reasonably be circumvented by the nonperforming Party through the use of alternate sources, workaround plans or other means (a "*Force Majeure Event*"). In the case of a Force Majeure Event, the nonperforming Party will be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail, and such Party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Notwithstanding anything in this Agreement to the contrary, a Force Majeure Event will not relieve a Client from its payment obligations in respect of amounts due for Services actually provided under this Agreement. Upon the cessation of the Force Majeure Event, each Party will use commercially reasonable efforts to resume its performance with the least possible delay.

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~~11-11.~~ Survival of Obligations. Except as otherwise provided herein, each Party's obligations under this Section 11 and Section 2.5 (*Compliance with Laws*), Section 6 (*Services Fees, Terms and Conditions of Payment, Reporting and Records*), Section 7.4 (*Effect of Termination*), Section 9 (*Intellectual Property Rights*), Section 8 (*Teach-Out*) and Section 12 (*Miscellaneous*) shall survive the termination of this Agreement to the extent permitted by Applicable Law.

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~~12.~~ 12. Miscellaneous.

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~~12.1~~ 12.1 Notices. All notices, requests, demands, waivers, consents, approvals, or other communications which are required or permitted to be given to a Party hereunder shall be sent addressed to such Party at the address as may be specified by such Party from time to time and in the manner provided in this Section; *provided*, that the initial notice address for each Party is as follows:

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if to Provider:

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Officer of Digital Education, The University of Colorado

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\_\_\_\_\_  
Attention:

with a copy to (which shall not constitute notice):

The University of Colorado,  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: General Counsel

if to Clients:

The University of Colorado, Boulder  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

The University of Colorado, Colorado Springs  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

The University of Colorado, Anschutz Medical Campus  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

The University of Colorado, Denver  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

with a copy to (which shall not constitute notice):

The University of Colorado, Boulder  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: General Counsel

The University of Colorado, Colorado Springs  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: General Counsel

University of Colorado, Anschutz Medical Campus  
\_\_\_\_\_

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Attention: General Counsel

The University of Colorado, Denver

Attention: General Counsel

~~12.2~~ **12.2 Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of each Party hereto. Neither this Agreement nor any right or obligation hereunder may be assigned or delegated in whole or in part by any Party to any other Person without the prior written consent of the other Parties. Any attempted assignment in violation of this Section 12.2 shall be null and void.

~~12.3~~ **12.3 Dispute Resolution.** The Parties shall resolve any dispute, controversy or claim arising out of or relating to this Agreement, or to the negotiation, execution, performance, termination, interpretation or enforcement thereof (each, a “*Dispute*”), as provided in this Section. The procedures described herein shall be the exclusive mechanism for resolving any Dispute that may arise from time to time. The Points of Contact shall first attempt in good faith to resolve any Dispute by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within thirty (30) Business Days after one Point of Contact provides notice to the other Point of Contact of such Dispute, a Party may, by written notice to each other Party (“*Escalation to Executive Notice*”), refer such Dispute to the Chancellor and the Vice President delegated by the President to supervise ODE. If these individuals cannot resolve the Dispute, the President of the University of Colorado shall be asked to make determination as to the resolution of the Dispute. Should either Party choose to appeal the President’s determination, that Party may refer this matter to binding arbitration within thirty (30) days after notice to the other Party with the Party initiating arbitration paying for all associated expenses related to arbitration. At any time a Party may request external mediation before moving to the next stage of resolution. The Party initiating mediation will pay all associated expenses related to mediation.

~~12.4~~ **12.4 Certain Interpretive Matters.**

12.4.1 Unless the context requires otherwise, all references to Sections or Exhibits are to Sections or Exhibits of or to this Agreement, words in the singular include the plural and vice versa, the terms “*include*”, “*includes*” “*including*” means “include, includes or including without limitation,” and the terms “*herein*,” “*hereof*” “*hereunder*” and words of similar import shall mean references to this Agreement as a whole and not to any individual Section or portion hereof. All references to “\$” or dollar amounts will be to lawful currency of the United States of America. All references to “\$” or dollar amounts,

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or “%” or percent or percentages, shall be to precise amounts and not rounded up or down. All references to “*day*” or “*days*” will mean calendar days unless the provision specifically refers to Business Days.

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12.4.2 No provision of this Agreement will be interpreted in favor of, or against, any of the Parties by reason of the extent to which any such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement or such provision.

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**IN WITNESS WHEREOF**, the Parties have executed and delivered this Master Services Agreement as of the day and year first above written.

**PROVIDER:**

OFFICE OF DIGITAL EDUCATION,  
THE UNIVERSITY OF COLORADO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CLIENTS:**

THE UNIVERSITY OF COLORADO,  
BOULDER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE UNIVERSITY OF COLORADO,  
COLORADO SPRINGS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE UNIVERSITY OF COLORADO,  
DENVER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE UNIVERSITY OF COLORADO,  
ANSCHUTZ MEDICAL CAMPUS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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*[Signature page to Master Services Agreement]*

## Annex A

**CERTAIN DEFINITIONS.** Capitalized terms used herein and not otherwise defined shall have the following meanings:

“**Academic Term**” means each of the fall and spring semesters and summer term of a Client. Academic Terms also includes terms during which a Client offers a Program or Programs that commence on a date other than the first ten (10) days of the fall or spring semester or summer term of such Client.

“**Academic Term Payment**” has the meaning set forth in Section 6.2.1(c).

“**Academic Term True Up Amount**” has the meaning set forth in Section 6.2.1(b).

“**Access**” refers to the ability of the agents, vendors, subcontractors, officers, directors and employees of Provider, as authorized by Provider and as is reasonably necessary to perform the Services, to enter and exit the facilities of a Client, review and analyze relevant documents, books and records of a Client (including copies), and consult with any employees, consultants and contractors of a Client.

“**Accrediting Body**” means any Person, whether private or quasi-private, whether foreign or domestic, that engages in the granting or withholding of accreditation of higher education institutions or their educational programs in accordance with standards and requirements relating to the performance, operations, financial condition and/or academic standards of such institutions, including without limitation the Higher Learning Commission.

“**Actual Academic Term Payment**” means, with respect to a calendar month, the portion of Net Tuition and Fees payable by a Client to Provider for the calendar month, calculated in accordance with Section 6.2 based on Net Tuition and Fees for the calendar month

“**Affiliate**” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. For purposes hereof, “control” shall mean, as to any Person, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise (and the terms “controlled by” and “under common control with” shall have correlative meanings); *provided, however*, that Provider and the Clients shall not be deemed to be Affiliates of one another for any purposes of this Agreement.

“**Applicable Law(s)**” means any laws, statutes, rules, regulations, ordinances, orders, codes, judgments, decrees or other legally binding requirements of any Governmental Entity or Educational Agency applicable to a Party.

“**Background Intellectual Property**” means the Intellectual Property Rights owned by a Party prior to the Effective Date.

“**Bad Debt**” means *[to come, including different percentages for different categories of student account receivables]*.

[Annex A – Page 41]

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“BC/DR” shall have the meaning stated in Section 5.3.1.

“Business Day” means any day other than a Saturday, a Sunday or a day on which commercial banks in Denver, Colorado are authorized or obligated by Applicable Law or executive order to remain closed.

“Cause” has the meaning set forth in Section 7.2.4.

“CCPA” means the California Consumer Privacy Act of 2018, as amended.

“Census” is the official counting date for enrollments

“Client Academic Term Report” means, with respect to each Academic Term during the Term specified in Section 6.2.1 a report containing the following information:

(a) Amounts (x) charged or credited to each Student on a per-student basis and (y) written off by a Client with respect to each Student on a per-student basis, during the Academic Term immediately preceding the just completed Academic Term;

(b) Net Tuition and Fees earned or refunded by a Client from or on behalf of each Student on a per-student basis during the Academic Term immediately preceding the just completed Academic Term;

(c) The aggregate amount of Net Tuition and Fees received by a Client in the form of credit card payments and the credit card fees charged against those amounts and deducted from Net Tuition and Fees during the Academic Term immediately preceding the just completed Academic Term; and

(d) The calculation of the (x) Actual Academic Term Payment, including any reconciliation thereof, for the Academic Term immediately preceding the just completed Academic Term, (y) Estimated Academic Term Payment for the just completed Academic Term and (z) Academic Term Payment for the just completed Academic Term.

“Client Data and Information” means all data, information, and statistics related to a Client (including as related to Programs, Courses, Students, potential students, faculty and employees) in each case that is provided or otherwise made available by a Client to Provider, or Provider has access to as a result of the performance of, or in connection with the performance of, a Service. For the avoidance of doubt, Client Data and Information includes all data, information, and statistics that are derived from processing of Client Data and Information by or on behalf of Provider described in either or both of (a) and (b) above, including De-Identified or Aggregated Data Sets.

“Client IP” means all Intellectual Property Rights in the following:

(e) all Course Materials owned by a Client on the Effective Date;

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(f) all Course Materials and all improvements to the Course Materials made or developed by Provider on or after the Effective Date in connection with the performance of Services for a Client under this Agreement;

(g) all modifications, enhancements, and derivative works to or of the Course Materials described in clauses (a) and (b) above that are developed or made by a Client, or by Provider for a Client, on or after the Effective Date;

(h) all trademarks, service marks, logos, domain names and similar items that are owned by a Client;

(i) all delivery and instruction by a Client's faculty of Courses and Course Materials that are developed or made by or for a Client;

(j) all faculty training and development materials, faculty handbooks, faculty manuals, faculty policies, and faculty assessment tools and materials that are developed or made by or for a Client;

(k) all research and clinical trials conducted by the faculty of a Client, including research results and papers;

(l) all corporate training and development materials developed or made by or for a Client;

(m) all policies and procedures manuals, employee handbooks and course catalogues of a Client that are developed or made by or for a Client;

(n) all Client Data and Information;

(o) all content posted on a Client's website, social media and student portal, including the content involving online media and social media interactions with a Client's students and potential students, in each case, as developed or made by or for a Client; and

(p) all Background Intellectual Property of a Client not described in the preceding clauses (a) through (k).

**"Client Platforms"** means the learning management platform, student information system, customer relationship management, identity management and other software platforms used by a Client to deliver the Courses and Programs, facilitate the participation by students in Student Financial Assistance Programs, monitor satisfactory academic progress and administer assessments, provide services to student and faculty and maintain grades and transcripts.

**"Client Services"** means the services provided by a Client to Provider for the benefit of Provider that are described in Section 4, set forth in the Program Sheet, and set forth in one or more Services Addenda to this Agreement mutually agreed to in writing by the Parties.

**"Core Client Functions"** has the meaning set forth in Section 1.

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“**Course Materials**” means, collectively, text books, work books, syllabi, guides, and resource material and content for academic courses and curriculum related thereto, whether used for academic courses/programs or corporate training programs, including concepts, materials, resources and text requirements, self-study materials, case studies, curricula, video and audio content, academic course catalogs, assessment materials and tools, lesson plans, course activities/projects, lectures, the designs for the academic courses (excluding generic course designs) and related items and materials, in all forms and media.

“**Courses**” means all academic courses offered by or for a Client as part of its Programs.

“**De-Identified or Aggregated Data Sets**” means data sets that are derived from any Client Data and Information, and that have been de-identified, pseudonymized, anonymized or aggregated, such that the data sets do not specifically identify, or reasonably allow for the identification or re-identification of, a Client, Client’s confidential information, Client’s students, Client’s faculty or any other natural Person associated or affiliated with a Client. De-Identified or Aggregated Data Sets may include compiled statistical and performance data and information related to student performance, retention rates, graduation rates, and similar metrics and the provision and operation of the Services and the results thereof, in each case so long as such data and information complies with the preceding sentence.

“**Dispute**” has the meaning set forth in [Section 12.3](#).

“**Early Termination Fee**” means an amount in cash equal to the aggregate Services Fees paid or payable by a Client to Provider for the twelve (12) full calendar months immediately preceding the effective date of termination.

“**ED**” means the United States Department of Education.

“**Educational Activities**” means all aspects of the operation of a postsecondary educational institution for general educational purposes (including the conferring of academic degrees, diplomas, honors or certificates), as such activities are conducted by a Client.

“**Educational Agency**” means any Person, whether governmental, government chartered, private, or quasi-private, that engages in granting or withholding Educational Approvals for, or otherwise regulates, post-secondary educational institutions, their programs, or their agents or employees in accordance with standards relating to the 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 U.S. Department of Defense, the U.S. Department of Veterans’ Affairs, and State Educational Agencies.

“**Educational Approval**” means any license, permit, authorization, certification, accreditation, or similar approval, issued or required to be issued by an Educational Agency to a Client with respect to any aspect of a Client’s operations subject to the oversight of such Educational Agency or the participation of such Client in Student Financial Assistance Programs.

“**Educational Law**” means all Applicable Law and Accrediting Body standards or other requirements relating to or administered by any Educational Agency or relating to any Student

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Financial Assistance Program, grants or loans, including all statutory and regulatory provisions related to the Title IV Programs.

“**Escalation to Executive Notice**” has the meaning set forth in Section 12.3.

“**Estimated Academic Term Payment**” means, with respect to each calendar month during the Term in which classes of any of the Programs listed in a Program Sheet are held, the good faith estimated Services Fees payable by a Client for the Academic Term, calculated in accordance with Section 7.2 based on the good faith estimated Net Tuition and Fees for the Academic Term.

“**Executive(s)**” has the meaning set forth in Section 12.3.

“**FAFSA**” means the Free Application for Federal Student Aid published by ED.

“**FERPA**” means the Family Educational Privacy & Rights Act, 20 U.S.C. §1232g, and the regulations set forth at 34 C.F.R. Part 99.

“**Fiscal Year**” means the fiscal year of a Client, which shall be the fiscal year ending June 30.

“**Force Majeure Event**” has the meaning set forth in Section 10.

“**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, but excluding any Educational Agency.

“**HEA**” means the Higher Education Act of 1965, as amended, and the rules and regulations thereunder.

“**Initial Term**” has the meaning set forth in Section 7.1.

“**Intellectual Property Rights**” means any and all intellectual property, intangible property and proprietary rights, title, interests and protections, however arising, pursuant to the laws of any jurisdiction throughout the world, including, all inventions (whether or not patentable), all improvements thereto and all patents, patent applications, provisionals and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, divisionals, restorations, and reexaminations thereof, all registered and unregistered trademarks, service marks, trade dress, logos, trade names, internet domain names, website content, social medial account names and passwords, social media handles, tags, hashtags, corporate names and similar indicia of source or origin, whether registered or unregistered, including all goodwill associated therewith, and all applications (including intent-to-use applications), registrations, and renewals in connection therewith, all copyrights and all applications, registrations and renewals in connection therewith, including all rights in works of authorship, translations, abridgments, revisions, compilations and derivative works, all rights in confidential or proprietary information

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and trade secrets (including rights in customer lists, lists of students and prospective students, employer lists, alumni lists, supplier lists, pricing and cost information, business and marketing plans and other confidential business information, ideas, formulas, compositions, know-how, techniques, research and development information, drawings, specifications, designs, plans, proposals, and technical data), and other intellectual property rights and related proprietary rights.

“**Marketing Materials**” means all marketing copy, slogans, art work and related materials associated with the marketing materials for the Programs listed in a Program Sheet that are created and developed by Provider and all websites and website content created and developed by Provider for marketing of the Programs listed in a Program Sheet.

“**Material Breach**” has the meaning set forth in Section 7.2.4.

“**Net Tuition and Fees**” ~~means~~ also referenced as “**Net Revenue**” means all revenue received by a Client for tuition and fees from or on behalf of Students enrolled in one or more of the Programs listed in a Program Sheet minus the amount of scholarships, refunds and discounts provided by a Client and Bad Debt.

“**Person**” means any individual, partnership (general or limited), corporation, limited liability company, joint venture, association, or other form of business organization (whether or not regarded as a legal entity under Applicable Law), trust or other entity or organization, including a Governmental Entity and an Educational Agency.

“**Personal Information**” means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual as defined under the CCPA, as well as any analogous term may be as defined under Applicable Law.

“**Point of Contact**” means, with respect to each Party, a natural person appointed by such Party to supervise and coordinate the performance of the Services on a day-to-day basis, including using good-faith efforts to resolve any disputes or issues that may arise in the ordinary course of such performance.

“**Program Attributes**” has the meaning set forth in Section 4.3 and/or as defined in a Program ~~Term~~ Sheet.

“**Program Director**” means the individual designated by Client as director of the Programs listed in a Program Sheet.

“**Program Discovery**” means the initial exploration and planning activity for Programs listed in a Program Sheet.

“**Program Launch Term**” means a period that commences on the first day of classes of the first cohort of any Program listed in a Program Sheet and ends on the first to occur of last day that such Program is offered by Client or the date that this Agreement is terminated or expires in accordance with its terms [in respect of the Client that offers such Program.]

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“**Programs**” means all graduate degree programs, undergraduate degree programs, doctoral degree programs, certificate programs, or other educational programs offered in whole or in part by or for a Client, whether offered online, on a campus or other site, in a hybrid format, or by other mode of delivery.

“**Program Sheet**” means the Program Sheet executed by the Parties before the Effective Date attached as **Exhibit A**, as from time to time amended or supplemented by the Parties.

“**Provider Service Category**” means a group of related Provider Services designated in **Section 3** either by specific reference or grouping together under a common heading. Provider Service Categories and the division of the Provider Services into Provider Service Categories are for organizational purposes only and should not be interpreted in any way as limiting the scope of the Provider Services.

“**Provider Services**” means the services provided by Provider to a Client for the benefit of a Client’s Students that are described in **Section 3**, set forth in the Program Sheet, and set forth in one or more Services Addenda to this Agreement mutually agreed to in writing by the Parties.

“**Regents**” means the Regents of the University of Colorado.

“**Renewal Term**” has the meaning set forth in **Section 7.1**.

“**Services**” means the Provider Services and the Client Services.

“**Services Addenda**” has the meaning set forth in **Section 2.3**.

“**Services Addendum**” has the meaning set forth in **Section 2.3**.

“**Services Fees**” has the meaning set forth in **Section 6.1**.

“**State Educational Agency**” means any state educational licensing authority, agency, department, board, commission or other body that provides a license, certification, exemption or other authorization necessary for a postsecondary institution (whether its main campus, branch campus, additional location, satellite or other facility thereof) to provide post-secondary education in that state through any means or mechanism, including distance education, and including any approval that is required under applicable state law to offer an educational program in any particular occupational field, to permit a graduate of a Client to obtain professional licensure in that state, or to participate in any Student Financial Assistance Program in that state.

“**Student Financial Assistance Program**” means any form of student financial assistance, grants or loans administered by any Governmental Entity or Educational Agency including the Title IV Programs, state grant or loan programs, tuition-assistance programs administered by the U.S. Department of Defense, and veterans’ education benefits administered by the U.S. Department of Veterans’ Affairs.

“**Students**” are defined in the following categories:

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“**Inherited Students**” means previously enrolled students that are actively enrolled in any Program during the first term where Provider supported Students are also enrolled.

“**Baseline Students**” means the number of students that make up Program Net Revenues from the preceding fiscal year prior to the initial term of the Program ~~Term sheet~~ Sheet agreement unless mutually agreed to otherwise as noted in the Program Sheet.

“**Growth Students**” means all students excluding “inherited” and “baseline students” as defined.

“**Teach-Out Period**” has the meaning set forth in Section 8.1.

“**Term**” has the meaning set forth in Section 7.1.

“**Title IV Program**” means any Student Financial Assistance Program authorized and administered pursuant to Title IV of the HEA.

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**EXHIBIT A**

**Program Sheet #1**

This Program Sheet (“**Program Sheet #1**”) is entered into as of \_\_\_\_\_, 202\_\_\_\_ (“**Effective Date**”) pursuant to the Master Services Agreement (“**Agreement**”) between the Office of Digital Education, the University of Colorado (“**Provider**”), University of Colorado \_\_\_\_\_ (“**Client**”) and other campuses of the University of Colorado.

The terms and conditions of the Agreement are incorporated in this Program Sheet #1 by this reference. Capitalized terms not defined in this Program Sheet #1 shall have the meanings set forth in the Agreement.

**1. Programs:**

This Program Sheet shall cover the following Programs which shall collectively be referred to as the “**Programs**”. Programs listed should include any area of academic emphasis including, but not limited to, concentrations, tracks, specializations, and minors.

| Name of Program | Program Launch Term |
|-----------------|---------------------|
| _____           | _____               |
| _____           | _____               |

**2. Key Program Attributes:**

|  |                                   |
|--|-----------------------------------|
| Initial tuition/fees:  | Note: This will change over time. |
| Credits for degree/credential:                                   |                                   |
| Number of student entry points per year:                         |                                   |
| Number of Courses to be developed:                               |                                   |
| Length of Courses:   |                                   |
| Experiential learning component:                                 | Example: Clinical.                |
| Authorized/Accredited in:  | (States)                          |
| Admissions decisions turnaround timeframe:                       |                                   |
| Transfer credit review timeframe:                                |                                   |
| Application deadline is X days prior to the Academic Term start: |                                   |
| Minimum and maximum course/section size:                         |                                   |
| Financial Aid packaging timeframe:                               |                                   |

**3. Admissions Criteria:**

**4. Summary of Provider Services:**

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Provider will provide all Provider Services as described in Section 3 of the Agreement and any variations are identified below:

**5. Points of Contact/Contact Information:**

|                                       |  |
|---------------------------------------|--|
| Client's Program Director             |  |
| Client's Launch Contact               |  |
| Client's Marketing Contact            |  |
| Provider's Course Development Contact |  |
| Provider's Launch Contact             |  |
| Provider's Marketing Contact          |  |

**6.**

**6.7. Service Fees:**

a. Service fees are outlined in ~~Section 6~~ **Exhibit C** of the Agreement and any variations are identified below:

**7.8. Program Performance Criteria:**

**8.9. Payment Timing and Reconciliation Timeframe:**

|  |        |                                      |              |
|--|--------|--------------------------------------|--------------|
| <b>Office of Digital Education, the University of Colorado</b> |        | <b>University of Colorado, _____</b> |              |
| By:  |        | By:                                  |              |
| _____  | Name:  | _____                                | Name:        |
| _____  | Title: | _____                                | Title: _____ |
| _____  |        | _____                                |              |
| Date:  |        | Date:                                |              |
| _____  |        | _____                                |              |

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## EXHIBIT B

### Legal and Regulatory Compliance Standards

With respect to Provider, solely to the extent the following are applicable to Provider in its capacity as a service provider providing the Services to and on behalf of a Client pursuant to this Agreement and, with respect to a Client, solely in its capacity as an institution of higher education and the recipient of the Services pursuant to this Agreement:

1. The terms imposed by Higher Learning Commission as the Client's institutional accrediting body.
2. The terms and conditions associated with all Educational Approvals applicable to a Client, including but not limited to all Educational Approvals required from states where the Client has enrolled students or met a State Educational Agency's physical presence requirements, as well as the requirements set forth at 34 C.F.R. § 600.9 and any successor regulation, as applicable.
3. The requirements set forth at 20 U.S.C. § 1094(a)(20) and 34 C.F.R. § 668.14(b)(22) regarding payments based directly or indirectly on success in securing enrollments or financial aid to covered Persons.
4. Educational Laws applicable to a Client in states where the Client has enrolled students or met a State Educational Agency's physical presence requirements.
5. All applicable Educational Laws with respect to the recruitment, marketing and enrollment practices of Client, including with respect to the licensure of individuals and agents engaged in recruitment and enrollment activities by applicable State Educational Agencies.
6. All applicable Educational Laws regarding misrepresentations, as that term is defined in 34 C.F.R. Part 668, Subpart F and the consumer disclosure requirements in 34 C.F.R. Part 668 Subpart D, as in effect from time to time.
7. The Educational Laws governing preferred lenders and codes of conduct set forth in 20 U.S.C. § 1094; and prohibited inducements, as set forth in 20 U.S.C. § 1085(d)(19) and 34 C.F.R. § 682.212.
8. All Applicable Laws and Educational Laws regarding privacy and safeguarding of student educational records and medical information, including without limitation the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 C.F.R. Part 99).

[Exhibit B – Page 41]

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## EXHIBIT C

### Services Fees Menu

1. Inherited Students: For the time that these students remain continuously enrolled, Provider shall receive a fee of 10% of the Net Revenues from “Inherited Students.”
2. Baseline Students: For the entire length of the Program Sheet, Provider shall receive a fee of 15% of the Net Revenues from “Baseline Students”. In any term where Inherited Students are active, the application of 15% of Net Revenue will be used against Total Baseline Students minus Inherited Students.
3. Growth Students: For all Growth Students, ~~Program~~Provider shall receive a fee of forty-five percent (45%) of Net ~~Tuition and Fees~~Revenues; and Client share receive fifty-five percent (55%) of Net ~~Tuition~~Revenues.
- ~~3-4.~~Option Regarding Course Design and Development Service: Provider will reduce its share of Growth Student Net Revenue by 5% should a campus not wish to use Provider’s Course Design and FeesDevelopment Services (resulting in 40% Net Revenue); this reduction is subject to campus Course Design and Development Services and resulting Courses being held to a mutually agreed upon measurement or rubric for course quality.

Payments of the amounts described in Exhibit C shall be made to a Client and Provider in all subsequent Academic Terms as described in Section 6.2 and the correlating Program Sheet. In each subsequent Academic Term, each Client shall reconcile its records, calculate the Academic Term True Up Amount pursuant to Section 6.2.1(b) and add or subtract the Academic Term True Up Amount from the corresponding payment to Provider.

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