Acquisition Agreement

by and between

Wesley College, Inc.

and

Delaware State University

Dated as of July 9, 2020
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ACQUISITION AGREEMENT

THIS ACQUISITION AGREEMENT (this “Agreement”) is made as of July __, 2020, by and among Wesley College, Inc., a non-stock Delaware corporation (“Seller”), and Delaware State University, a publicly supported institution of higher education incorporated in Delaware (“Buyer,” and together with Seller, the “Parties”).

RECITALS

WHEREAS, Seller operates Wesley College, a private college located in Dover, Delaware (the “College”).

WHEREAS, the Trustees and institutional leadership of each of Buyer and Seller have determined that, subject to the conditions set forth in this Agreement, it is in their respective interests for the two institutions to come together to form a stronger and more diverse university system whether as a subsidiary such as “Wesley College, an Affiliate of the Delaware State University System,” an operating unit of DSU, or such other form. Upon Closing, Wesley College and DSU shall be combined and thereafter operated in a form and manner to be decided by DSU in its sole discretion.

THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, the adequacy of which is hereby acknowledged, and intending to be legally bound hereby the Parties agree as follows:

ARTICLE I
DEFINITIONS

The following terms have the meanings specified or referred to in this ARTICLE I:

“Accreditation Authority” means Middle States Commission on Higher Education, together with any other organization, association, commission or other accreditation authority necessary for Buyer or Seller to continue to operate in the manner in which they operate as of the date of this Agreement.

“Acquisition Proposal” has the meaning set forth in Section 6.3(a).

“Action” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, investigation or hearing or suit of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.
“Affordable Care Act” means the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act.

“Agreement” has the meaning set forth in the preamble.

“Assigned Contracts” has the meaning set forth in Section 2.1(c).

“Assignment and Assumption Agreement” has the meaning set forth in Section 3.2(a)(ii).

“Assignment and Assumption of Lease” has the meaning set forth in Section 3.2(a)(iv).

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“Balance Sheet” has the meaning set forth in Section 4.4.

“Balance Sheet Date” has the meaning set forth in Section 4.4.

“Benefit Plan” has the meaning set forth in Section 4.16(a).

“Bill of Sale” has the meaning set forth in Section 3.2(a)(i).

“Books and Records” has the meaning set forth in Section 2.1(m).

“Business Day” means any day except Saturday, Sunday or any other day designated as a State holiday by the State of Delaware.

“Buyer” has the meaning set forth in the preamble.


“Closing” has the meaning set forth in Section 3.1.

“Closing Date” has the meaning set forth in Section 3.1.

“Closing Funded Debt” means any and all Indebtedness of Seller existing as of the Closing, the satisfaction of which shall release any and all Encumbrances, other than Permitted Encumbrances, on the Purchased Assets, and terminate all security agreements, financing statements or other similar instruments in connection therewith.


“College” has the meaning set forth in the Recitals.

“Communication” means any notice, request, demand, claim or communication required or permitted to be given to a party under this Agreement.
“Confidentiality Agreement” means that certain Mutual Non-Disclosure and Public Announcement Agreement, entered as of April 2020, by and between Buyer and Seller.

“Contracts” means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and arrangements, whether written or oral.

“Data Room” means the electronic storage website or platform identified in Section 1.1 of the Disclosure Schedules and which contains the files, documents and information set forth in the index included in Section 1.1 of the Disclosure Schedules.

“Deed” has the meaning set forth in Section 3.2(a)(v).

“Disclosure Schedules” means the Disclosure Schedules to be delivered by Seller as described in this Agreement.

“Dollars” or “$” means the lawful currency of the United States.

“E.O. 11246” has the meaning set forth in Section 4.17(e).

“Encumbrance” means any encumbrance, charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), judgment, option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Environmental Claim” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof), noise, odor, vibration, or the protection of natural resources, endangered or threatened species, human health or safety, the health or safety of employees, contractors or other visitors to any location owned, leased or used by Seller in connection with the College, or the environment (including ambient air, soil, sediment, surface water or groundwater, drinking water, subsurface strata or the control of noise, odor or vibration); (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes the following (including their implementing regulations and any state analogs): CERCLA; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water

“Environmental Liability” means any Liability arising from or related to: (i) an Environmental Claim; (ii) any cleanup, remediation, compliance or removal cost (including the cost of any investigation, testing, compliance, remediation or remedial action) that in each case is incurred: (A) as a result of a requirement of Environmental Law or other applicable Law; (B) as a result of the application of normal industry practices (it being acknowledged that compliance with any program element, safety code, standard, guideline, performance measure or rule issued or published by, industry standard-setting organizations or trade associations, is to be presumed to constitute normal industry practices) or the standard business practices of Buyer or its Affiliates; or (C) in order to protect the health or safety of employees, contractors or other visitors to any location owned, leased or used by the College; (iii) natural resource damages, loss or expense (including reasonable and incurred attorney’s and consultant’s fees and expenses) arising out of, relating to or resulting from any Environmental Law or environmental, health or safety matter or condition relating to the College; (iv) the generation, transportation, use, storage, management, disposal or re-disposal or release of Hazardous Materials by the College prior to the Closing; or (v) the contamination of any of the products or former products of the College with any Hazardous Materials.

“Environmental Notice” means any written directive, notice of violation or infraction, or notice respecting any actual or potential Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“Environmental Permit” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.


“ERISA Affiliate” means all employers (whether or not incorporated) that at any time prior to the Closing Date would be treated together with Seller or any of its Affiliates as a “single employer” within the meaning of Section 414 of the Code.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Contracts” has the meaning set forth in Section 2.2(a).

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Expected Closing Date” means June 30, 2021.
“Financial Statements” has the meaning set forth in Section 4.4.

“GAAP” means United States generally accepted accounting principles in effect from time to time.

“Government Contracts” has the meaning set forth in Section 4.7(a)(x).

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency, bureau, official or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law) as well as any corporations owned or chartered by such government or political subdivision, agency, bureau, official or instrumentality, or any arbitrator, court or tribunal of competent jurisdiction, including all taxing authorities.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Hazardous Materials” means: (a) any waste, agent or substance listed, defined, designated, classified or otherwise determined by any Environmental Law to be ignitable, corrosive, explosive, infectious, mutagenic, toxic, radioactive, dangerous or otherwise hazardous, (b) any agent, pollutant, contaminant, waste, agent, chemical or other substance, material (whether solid, liquid or gas) that is regulated by any Governmental Authority, including any that is defined or classified as a “pollutant”, “contaminant”, “toxic waste”, “hazardous substance”, “toxic substance”, “hazardous waste”, “special waste”, “solid waste”, “hazardous material”, “hazardous constituent”, “extremely hazardous waste”, “restricted hazardous waste,” or a word, term, or phrase of similar meaning or regulatory effect under any Environmental Law, and (c) petroleum or any derivative or by-product thereof, radon, radioactive material, asbestos, or asbestos containing material, urea formaldehyde foam insulation, off-specification commercial chemical product, solid waste, infectious medical waste, lead based paint, lead, mold, mold spores and mycotoxins or polychlorinated biphenyls.

“HIPAA” has the meaning set forth in Section 4.16(c).

“Indebtedness” means, without duplication, as of the Closing: (i) all obligations of Seller for borrowed money (other than trade payables incurred in the ordinary course of business); (ii) any indebtedness of Seller secured by Encumbrances on property acquired by Seller, whether or not such indebtedness was assumed at the time of acquisition of such property; (iii) the capitalized portion of any personal property lease that is, as of the Closing, a capital lease; (iv) all obligations of Seller under any interest rate swap or other swap, collar, cap, hedging arrangement or other similar arrangement to the extent not included in clause (i) of this definition; (v) liabilities or obligations of Seller to any other Seller or any Affiliate of a Seller; (vi) all unpaid Taxes the payment of which is due or past due (other than Taxes being contested in good faith in accordance with applicable law); and (vii) all obligations of Seller arising under guarantees of a liability of any other Person of a type described in any of clauses (i) through (vi) above. Indebtedness includes, with respect to the preceding items, principal of and accrued
interest, all prepayment penalties, breakage costs, termination fees or break-up fees, make-whole payments and premiums, fees, and other amounts due upon prepayment thereof.

"Information Privacy and Security Laws" means any applicable Law that Seller is obligated to comply with under any Law or Contract, in each case governing: (i) the privacy or security of Personal Data, including as relevant to the collection, storage, processing, transfer, sharing and destruction of Personal Data; or (ii) online behavioral advertising, tracking technologies, call or electronic monitoring, interception or recording, or any outbound calling and text messaging, telemarketing and email marketing.

"Insurance Policies" has the meaning set forth in Section 4.12.

"Intellectual Property" means all intellectual property and proprietary rights and assets of every kind and nature throughout the world (and the entire right, title and interest therein and thereto), whether registered or unregistered, including any and all: (a) trademarks, service marks, trade names, service names, brands, logos, trade dress, design rights and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by any of the foregoing; (b) internet domain names, whether or not trademarks, registered by any authorized private registrar or Governmental Authority, web addresses, web pages, websites and related content, accounts with Twitter, Facebook and other social media companies and the content found thereon and related thereto, and URLs; (c) works of authorship, expressions and designs, whether or not copyrightable or registrable, including copyrights, author, performer, moral and neighboring rights; (d) inventions, improvements, discoveries, processes, formulae, techniques, trade secrets, business and technical information, know-how, data, databases, data collections, hardware, technology, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, documentation, manuals, and other confidential or proprietary information; (e) patents (including all reissues, divisionals, provisionals, continuations, continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor's certificates, petty patents and patent utility models); (f) rights in Software; (g) all registrations, applications and renewals for any of the foregoing; and (h) all rights to any Actions of any nature to the extent related to the foregoing, whether accruing before, on or after the date hereof, including all rights to and claims for damages, restitution and injunctive relief for past, present or future infringement, dilution, misappropriation, violation, misuse, breach or default, with the right but no obligation to sue for such legal and equitable relief, and to collect, or otherwise recover, any such damages.

"Intellectual Property Agreements" means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, relating to Intellectual Property that is used, or held for use, by Seller in connection with, or is necessary for the conduct of, the College as currently operated, to which Seller is a party, beneficiary or otherwise bound.

"Intellectual Property Assets" means all Intellectual Property that is owned and used, or held for use, by Seller in connection with the College.
“Intellectual Property Assignment” has the meaning set forth in Section 3.2(a)(iii).

“Intellectual Property Registrations” means all Intellectual Property Assets that are the subject of an issuance, registration, or pending application for registration or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents and pending applications for any of the foregoing.

“Interim Balance Sheet” has the meaning set forth in Section 4.4.

“Interim Balance Sheet Date” has the meaning set forth in Section 4.4.

“Interim Financial Statements” has the meaning set forth in Section 4.4.

“Interim Funding Amount” has the meaning set forth in Section 2.6.

“IT Systems” has the meaning set forth in Section 4.21(a).

“Knowledge of Seller” or “Seller’s Knowledge” or any other similar knowledge qualification, means the actual knowledge of any of the officers of Seller or the College after reasonable inquiry.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, Governmental Order, legally binding guidance issued by a Governmental Authority, other requirement or rule of law of any Governmental Authority.

“Leased Real Property” has the meaning set forth in Section 4.10(b).

“Lease” has the meaning set forth in Section 4.10(b).

“Liabilities” means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

“Licensed Intellectual Property” has the meaning set forth in Section 4.11(d).

“Material Adverse Effect” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to be, individually or in the aggregate, materially adverse to (a) the business, operations, condition (financial or otherwise) or assets of the College, (b) the value of the Purchased Assets, individually or as a whole, or (c) the ability of Seller to consummate the transactions contemplated hereby on a timely basis provided, however, that the term “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting institutions of higher education; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement or any action taken
(or omitted to be taken) with the written consent of or at the written request of Buyer; (vi) any changes in applicable Laws or accounting rules (including GAAP); (vii) the negotiation, execution, announcement or pendency of the transactions contemplated by this Agreement, including the impact thereof on relationships, contractual or otherwise, with customers or suppliers; (viii) any pandemic, natural or man-made disaster or acts of God; or (ix) any failure by Seller to meet any internal or published projections, forecasts or revenue or earnings predictions provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded; provided, further however, that any event, occurrence, fact, condition or change referred to in clauses (i), (ii), (iii), (iv), (vi) and (viii) shall not be excluded if such event, occurrence, fact, condition or change has a materially disproportionate adverse effect on the College as compared to other similarly situated institutions.

“Material Contracts” has the meaning set forth in Section 4.7(a).

“Multiemployer Plan” has the meaning set forth in Section 4.16(c).

“Non-U.S. Benefit Plan” has the meaning set forth in Section 4.16(a).

“Owned Real Property” has the meaning set forth in Section 4.10(a).

“Parties” has the meaning set forth in the preamble.

“Permits” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances, accreditations and similar rights or any extension, modification, amendment or waiver of the foregoing, obtained, or required to be obtained, from Governmental Authorities or Accreditation Authorities.

“Permitted Encumbrances” has the meaning set forth in Section 4.8.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“Personal Data” means any and all information that can reasonably be used to identify an individual natural Person, including any information defined as “personal data,” “personally identifiable information,” “individually identifiable health information,” “protected health information,” “personal information,” or similar designation under and regulated by Information Privacy and Security Laws.

“Personal Information” has the meaning set forth in Section 4.21(c).

“Privacy Policy” has the meaning set forth in Section 4.21(c).

“Purchase Price” has the meaning set forth in Section 2.5.

“Purchased Assets” has the meaning set forth in Section 2.1.

“Qualified Benefit Plan” has the meaning set forth in Section 4.16(c).
“Real Property” means, collectively, the Owned Real Property and the Leased Real Property.

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Representative” means, with respect to any Person, any and all trustees, directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Retained Employee” shall have the meaning set forth in Section 6.5(a).

“Schedule Deadline” has the meaning set forth in Section 6.14(a).

“Schedule Supplement” has the meaning set forth in Section 6.14(b).

“Section 503” has the meaning set forth in Section 4.17(e).

“Seller” has the meaning set forth in the preamble.

“Software” means computer software, including firmware, programs, source code and object code, and all data files, utilities, application programming interfaces, tools, algorithms, architecture, files, records, schematics, graphical user interfaces, images, icons, forms, methods of processing, software engines, platforms, data formats, computerized databases, all versions, updates, corrections, enhancements and modifications thereof.

“Tangible Personal Property” has the meaning set forth in Section 2.1(e).

“Tax” or “Taxes” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, whether disputed or not, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties, including any obligation to indemnify or otherwise assume or succeed to the Tax liability of any other Person.

“Tax Return” means any return, declaration, report, estimate, claim for refund, or information return or statement relating to, or required to be filed in connection with, any Taxes, including any schedule or attachment thereto, and including any amendment thereof and including any information returns or reports with respect to backup withholding.

“Transaction Documents” means this Agreement and all other agreements, instruments and documents required to be delivered at the Closing.
“Transaction Expenses” has the meaning set forth in Section 9.1.

“Transfer Taxes” has the meaning set forth in Section 6.11(b).

“Union” has the meaning set forth in Section 4.17(b).

“VEVRAA” has the meaning set forth in Section 4.17(e).

“WARN Act” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

“Year End Financial Statements” has the meaning set forth in Section 4.4.

ARTICLE II
PURCHASE AND SALE

Section 2.1 Purchase and Sale of College. Subject to the terms and conditions set forth herein, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances, other than Permitted Encumbrances, all of Seller's right, title and interest in, to and under all of the assets, properties and rights of every kind and nature (other than the Excluded Assets), whether real, personal or mixed, tangible or intangible (including goodwill), wherever located, to the extent that such assets, properties and rights exist as of the Closing Date and are used in or held for use in connection with the College (collectively, the “Purchased Assets”), including the following:

(a) all cash and cash equivalents;
(b) all accounts or notes receivable of the College;
(c) all Contracts, including Leases and Intellectual Property Agreements, other than the Excluded Contracts (the “Assigned Contracts”);
(d) all Intellectual Property Assets;
(e) all furniture, equipment, machinery, tools, vehicles, office equipment, supplies, computers, telephones and other tangible personal property of the College (the “Tangible Personal Property”);
(f) all Permits, including Environmental Permits, but only to the extent such Permits are transferable under applicable Law;
(g) all rights to any Actions of any nature available to or being pursued to the extent related to the College, the Purchased Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise;
(h) all Owned Real Property;
(i) all prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums and fees, to the extent related to the College or any Purchased Asset;

(j) all rights under warranties, indemnities and all similar rights against third parties to the extent related to the College or any Purchased Assets;

(k) all Tax records, Tax deposits or prepayments, Tax refunds and other Tax assets of Seller;

(l) all insurance benefits, including rights and proceeds;

(m) originals, or where not available, copies, of all books and records of Seller ("Books and Records"), including books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, personnel files, personnel records, student lists, student histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, student complaints and inquiry files, research and development files, records and data, sales material and records, strategic plans, internal financial statements and marketing and promotional surveys, material and research but excluding any books and records or other materials that Seller is required to retain under applicable Law, in which case, copies thereof shall be provided to Buyer to the extent permitted by Law; provided, however, that Seller shall be entitled to retain a copy of such Books and Records (or originals, to the extent required under applicable Law); and

(n) all goodwill and the going concern value of the College.

Section 2.2 Excluded Assets. Notwithstanding the foregoing, the Purchased Assets shall not include the following assets (collectively, the "Excluded Assets"):  

(a) Contracts, including Intellectual Property Agreements, that are listed in Section 2.2(a) of the Disclosure Schedules (the "Excluded Contracts");

(b) all Benefit Plans and assets attributable thereto, to the extent permitted by law and if elected by Buyer in its sole discretion;

(c) the rights which accrue or will accrue to Seller under the Transaction Documents; and

(d) such other assets as set forth on Section 2.2(d) of the Disclosure Schedule.

Section 2.3 Assumed Liabilities. Subject to the terms and conditions set forth herein, at the Closing Buyer shall assume and agree to pay, perform and discharge all of the Liabilities of Seller other than the Excluded Liabilities (the "Assumed Liabilities").

Section 2.4 Excluded Liabilities. Notwithstanding the provisions of Section 2.3 or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Seller that have not been disclosed to
Section 2.5 Purchase Price. In lieu of any payment from Buyer to Seller, Buyer shall assume the Assumed Liabilities.

Section 2.6 Interim Funding Option. Buyer shall have the option, but not the obligation, to make funding (if available to Buyer on terms deemed reasonable to Buyer in its sole discretion) available to Seller to cover any portion of the College’s fiscal year 2021 operating budget deficit (the “Interim Funding Amount”). In connection with Buyer providing to Seller the Interim Funding Amount, such Interim Funding Amount will be provided on such terms and conditions as Buyer and Seller shall mutually agree at such time, which may include the immediate transfer to Buyer of all of Seller’s right, title and interest to the Schwartz Center and other real estate as identified and agreed upon at such time.

Section 2.7 Third Party Consents. To the extent that Seller’s rights under any Contract or Permit constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Buyer without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Seller shall cooperate with Buyer in seeking to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer’s rights under the Purchased Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Seller, to the maximum extent permitted by Law and the Purchased Asset, shall act, from the Closing Date and for a period of up to six (6) months thereafter, as Buyer’s agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the Purchased Asset, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer.

ARTICLE III
CLOSING

Section 3.1 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Saul Ewing Arnstein & Lehr LLP, 1201 N. Market Street Suite 2300, Wilmington, DE 19801 at 10:00 AM, Eastern time, on the Expected Closing Date; provided all the conditions to Closing set forth in ARTICLE VII are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as the Parties may mutually agree upon in writing. The purchase of the Purchased Assets shall be deemed effective as of the day following the Closing Date. The date on which the Closing takes place is herein referred to as the “Closing Date”.
Section 3.2  Closing Deliverables.

(a)  At or prior to the Closing, Seller shall deliver to Buyer the following:

(i)  a bill of sale in a form and substance satisfactory to Buyer (the “Bill of Sale”) and duly executed by Seller, transferring the Tangible Personal Property included in the Purchased Assets to Buyer;

(ii)  an assignment and assumption agreement in a form and substance satisfactory to Buyer (the “Assignment and Assumption Agreement”) and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;

(iii) an assignment in a form and substance satisfactory to Buyer (the “Intellectual Property Assignment”) and duly executed by Seller, transferring all of Seller’s right, title and interest in and to the Intellectual Property Assets to Buyer;

(iv)  with respect to each Lease, an Assignment and Assumption of Lease in form and substance satisfactory to Buyer (each, an “Assignment and Assumption of Lease”) and duly executed by Seller;

(v)  with respect to each parcel of Owned Real Property, a deed in form and substance satisfactory to Buyer (each, a “Deed”);

(vi)  a certificate, dated as of the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 7.2(a) and Section 7.2(b) has been satisfied;

(vii)  a certificate (in a form reasonably satisfactory to Buyer) from Seller pursuant to Treasury Regulations Section 1.1445-2(b) that Seller is not a foreign person within the meaning of Section 1445 of the Code, signed by a duly authorized officer of Seller;

(viii) a certificate of an officer of Seller, dated the Closing Date, in form and substance reasonably satisfactory to Buyer certifying (i) that attached thereto are true and complete copies of Seller’s certified certificate of incorporation and bylaws, (ii) that attached thereto are true and complete copies of all resolutions adopted by the board of trustees (and any required actions by the members) of Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby, and (iii) the names and signatures of the officers of Seller authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder;

(ix)  copies of all of the Assigned Contracts to the extent not made available to Buyer in the Data Room;
(x) such other instruments of transfer, assumption, filings or documents, in form, scope and substance reasonably satisfactory to Buyer, as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

(b) At the Closing, Buyer shall deliver to Seller the following:

(i) the Assignment and Assumption Agreement duly executed by Buyer;

(ii) with respect to each Lease, an Assignment and Assumption of Lease duly executed by Buyer;

(iii) a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.3(a) and Section 7.3(b) has been satisfied; and

(iv) such other instruments of transfer, assumption, filings or documents, in form, scope and substance reasonably satisfactory to Seller, as Seller reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

(c) All tangible Purchased Assets transferred to Buyer at the Closing, including without limitation, Books and Records (including, where available, electronic versions thereof) constituting part of the Purchased Assets, shall be made available to Buyer on the Closing Date following the Closing or as promptly after the Closing as practicable.

Section 3.3 Post-Closing.

(a) Upon Closing, Seller agrees, as permitted by law and consistent with any obligations to any Government Authority, subject to making satisfactory provisions for any Liabilities of the Seller that have not been assumed by the Buyer, promptly to take such steps as are necessary to dissolve itself.

(b) Buyer shall have the sole discretion post-Closing as to the use, operation, and disposition of each asset purchased hereunder and the sole discretion whether and to what extent to operate, terminate, or combine with its own in some form or fashion any and all of the programs, services, and goodwill previously owned and operated by Seller.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that the statements contained in Section 4.1, Section 4.2, Section 4.3 (other than subsection (c)), Section 4.13, Section 4.19 and Section 4.22 are true and correct as of the date hereof. Seller represents and warrants to Buyer that, except as set forth in the Disclosure Schedules, all the statements contained in this ARTICLE IV shall be true and correct as of the date the Disclosure Schedules are delivered to Buyer as required pursuant to Section 6.14(a) hereof.
Section 4.1 Organization and Qualification of Seller. Seller is a non-stock corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to operate the College as currently operated. Section 4.1 of the Disclosure Schedules sets forth each jurisdiction in which Seller is licensed or qualified to do business. Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the College as currently operated makes such licensing or qualification necessary, except where the failure to be so licensed, qualified in good standing would not, individually or in the aggregate, have a Material Adverse Effect.

Section 4.2 Authority of Seller.

(a) Seller has full power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of Seller, Seller’s Board of Trustees and Seller’s members.

(b) This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by the other Parties) this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Seller enforceable against Seller in accordance with its terms.

Section 4.3 No Conflicts; Consents. The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation by Seller of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, bylaws or other applicable organizational documents of Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the College or the Purchased Assets; (c) except as set forth in Section 4.3 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract or Permit to which Seller is a party or by which Seller or the College is bound or to which the Purchased Assets are subject (including any Assigned Contract); or (d) result in the
creation or imposition of any Encumbrance on the Purchased Assets, except, in the case of the foregoing clauses (b), (c) and (d), for any violations, breaches, conflicts, defaults, accelerations or failures to give notice that would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the other Transaction Documents to which Seller is a party and the consummation of the transactions contemplated hereby and thereby.

**Section 4.4 Financial Statements.** Complete copies of the unaudited financial statements consisting of the balance sheet of Seller as at June 30 in each of the years 2017, 2018 and 2019 and the related statements of income and retained earnings and cash flow for the years then ended (the "Year End Financial Statements"), and unaudited financial statements consisting of the balance sheet of Seller as at June 30, 2020 and the related statements of income and retained earnings, and cash flow for the twelve-month period then ended (the "Interim Financial Statements" and together with the Year End Financial Statements, the "Financial Statements") have been delivered to or made available to Buyer. Except as otherwise provided on **Section 4.4** of the Disclosure Schedules, the Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments and the absence of notes. The Financial Statements fairly present, in all material respects, the financial condition of Seller as of the respective dates they were prepared and the results of the operations of Seller for the periods indicated. The balance sheet of Seller as of June 30, 2019 is referred to herein as the "Balance Sheet" and the date thereof as the "Balance Sheet Date" and the balance sheet of Seller as of June 30, 2020 is referred to herein as the "Interim Balance Sheet" and the date thereof as the "Interim Balance Sheet Date". Except as set forth on **Section 4.4** of the Disclosure Schedules, Seller maintains a standard system of accounting for the College established and administered in accordance with GAAP in all material respects.

**Section 4.5 Undisclosed Liabilities; Closing Funded Debt.** Seller has no Liabilities except: (a) those that are adequately reflected or reserved against in the Balance Sheet, as of the Balance Sheet Date; and (b) those that have been incurred in the ordinary course of business since the Balance Sheet Date and which are not material in amount. **Section 4.5** of the Disclosure Schedule lists all amounts that are expected to be Closing Funded Debt and the name and address of all Persons owed such amounts.

**Section 4.6 Absence of Certain Changes, Events and Conditions.** Except as contemplated by this Agreement or as set forth on **Section 4.6** of the Disclosure Schedules, from the Balance Sheet Date to the date hereof, Seller has operated in the ordinary course of business consistent with past practices in all material respects, and there has not been, with respect to Seller, any:

(a) event or occurrence that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) declaration, payment or commitment to make payment of any distributions;
(c) material change in any method of accounting or accounting practice for the College, except any change required by GAAP or applicable Law, or as disclosed in the notes to the Financial Statements;

(d) material change in cash management practices and policies, practices and procedures;

(e) entry into any Contract that would constitute a Material Contract;

(f) incurrence, assumption or guarantee of any Indebtedness except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;

(g) transfer, assignment, sale or other disposition of any of the Purchased Assets shown or reflected in the Balance Sheet, except in the ordinary course of business and except for assets with an aggregate value of less than $10,000;

(h) cancellation of any debts or claims or amendment, termination or waiver of any rights constituting Purchased Assets;

(i) transfer, assignment or grant of any license or sublicense of any material rights under or with respect to any Intellectual Property Assets or Intellectual Property Agreements;

(j) material damage, destruction or loss, or any material interruption in use, of any of the Purchased Assets, whether or not covered by insurance;

(k) any capital investment in, or any loan to, any other Person;

(l) acceleration, termination, material modification to or cancellation of any Assigned Contract or Permit;

(m) material capital expenditures which would constitute an Assumed Liability;

(n) imposition of any Encumbrance, except for Permitted Encumbrances, upon any of the Purchased Assets;

(o) material increase or material change in the compensation of any of its employees, other than as provided for in any written agreements provided or made available to Buyer or, solely with respect to non-executive employees, in the ordinary course of business;

(p) hiring or promoting any person as or to (as the case may be) an officer, or hiring or promoting any employee below officer except to fill a vacancy in the ordinary course of business;

(q) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, trustee,
independent contractor or consultant (or dependents, spouses or beneficiaries of any of the foregoing) of the College, (ii) Benefit Plan, or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;

(r) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any members or current or former directors, trustees, officers or employees of the College other than in the ordinary course of business consistent with past practices;

(s) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(t) other than in the ordinary course consistent with past practices, purchase, lease or other acquisition of the right to own, use or lease any property or assets in connection with the College for an amount in excess of $10,000, individually (in the case of a lease, per annum) or $50,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term); or

(u) enter into any Contract to do any of the foregoing, or take any action or omission that would result in any of the foregoing.

Section 4.7 Material Contracts.

(a) Section 4.7(a) of the Disclosure Schedules lists each of the following Contracts (x) by which any of the Purchased Assets are bound or affected or (y) to which Seller is a party or by which it is bound or affected in connection with the College or the Purchased Assets (such Contracts, together with all Leases set forth in Section 4.10 of the Disclosure Schedules and all Intellectual Property Agreements set forth in Section 4.11(b) of the Disclosure Schedules, being “Material Contracts”):

(i) all Contracts involving aggregate consideration in excess of $10,000 and which, in each case, cannot be cancelled without penalty or without more than one hundred twenty (120) days’ notice;

(ii) all Contracts that require Seller to purchase or sell a stated portion of the requirements or outputs of the College or that contain “take or pay” provisions;

(iii) all Contracts that contain a “most favored nations” clause or similar clauses granting a counterparty equal, similar or better treatment by Seller or the College than Seller or the College provides to other counterparties;

(iv) all Contracts that require Seller or the College to have or maintain any particular designation or contain other requirements based on the size of Seller or the College or the composition or diversity of its owners or that were awarded or entered into under or on the basis of a set-aside program, a program with respect to disadvantaged business enterprises, or any similar program or preference system;
(v) all Contracts that provide for the indemnification of any Person (other than a director, trustee, officer or employee of Seller), or the assumption of any Tax, environmental or other Liability of any other Person;

(vi) all Contracts that relate to the acquisition or disposition of any business, stock or a material amount of assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(vii) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;

(viii) (x) all employment agreements, and (y) all Contracts with independent contractors or consultants (or similar arrangements) which are not cancellable without material penalty or without more than ninety (90) days' notice;

(ix) except for Contracts relating to trade receivables in the ordinary course of business, all Contracts relating to indebtedness (including guarantees) of Seller, in each case having an outstanding principal amount in excess of $10,000;

(x) all Contracts, grants, awards, or subawards with the United States Department of Education, the State of Delaware, or with any other Governmental Authority ("Government Contracts");

(xi) all Contracts limiting the ability of Seller to compete or solicit customers or personnel in any line of business or with any Person or in any geographic area or during any period of time;

(xii) all joint venture, partnership or similar Contracts;

(xiii) all Contracts for the sale of any of the Purchased Assets or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the Purchased Assets;

(xiv) all powers of attorney with respect to any Purchased Asset;

(xv) all Contracts between Seller on the one hand and any Affiliate of Seller on the other hand;

(xvi) all collective bargaining agreements or Contracts with any Union; and

(xvii) all other Contracts that are material to the Purchased Assets or the operation of the College and not previously disclosed pursuant to this Section 4.7.

(b) Each Material Contract is valid, binding and enforceable against Seller and, to Seller's Knowledge, each other party thereto in accordance with its terms, and is in full force and effect, except as such enforceability may be limited by bankruptcy, insolvency,
reorganization, moratorium or similar Laws affecting creditors’ rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). Except as set forth in Section 4.7(b) of the Disclosure Schedules, (i) Seller is not in breach of or default under any Material Contract except for such breaches or defaults that would not have a Material Adverse Effect, and (ii) no party to any Material Contract has provided any notice of any intention to terminate, or challenge the validity or enforceability of, any Material Contract. Except as set forth in Section 4.7(b) of the Disclosure Schedules, no event has occurred which with notice or lapse of time would constitute a material breach or default, or permit termination, modification or acceleration under a Material Contract, except for such terminations, modifications or accelerations that would not have a Material Adverse Effect.

Section 4.8 Title to Purchased Assets. Seller has good and valid title to, or a valid leasehold interest in, all of the Purchased Assets. All Purchased Assets (including Owned Real Property and leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as “Permitted Encumbrances”):

(a) those items set forth in Section 4.8 of the Disclosure Schedules;

(b) liens for Taxes not yet due and payable;

(c) mechanics’, carriers’, workmen’s, repairmen’s or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the College or the Purchased Assets;

(d) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which are not, individually or in the aggregate, material to the College or the Purchased Assets and which do not prohibit or interfere with the current operation of any Real Property utilized by the College; or

(e) liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the College or the Purchased Assets.

Section 4.9 Condition and Sufficiency of Assets. Except as set forth in Section 4.9 of the Disclosure Schedules, the buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of Tangible Personal Property included in the Purchased Assets are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of Tangible Personal Property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The Purchased Assets are sufficient for the operation of the College as currently operated.

Section 4.10 Real Property.
(a) Section 4.10(a) of the Disclosure Schedules sets forth a list of the street addresses and uses of all real property owned by Seller and used in or necessary for the operation of the College as currently operated, and the square footage of each building located on such real property (together with all buildings, fixtures, structures and improvements situated thereon and all easements, rights-of-way and other rights and privileges appurtenant thereto, collectively, the "Owned Real Property"). With respect to each parcel of Owned Real Property, except as set forth in Section 4.10(a) of the Disclosure Schedules:

(i) Seller has good and marketable fee simple title, free and clear of all Encumbrances, other than Permitted Encumbrances;

(ii) Seller has not leased or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof; and

(iii) there are no unrecorded outstanding options, rights of first offer or rights of first refusal to purchase such Owned Real Property or any portion thereof or interest therein.

(b) Section 4.10(b) of the Disclosure Schedules sets forth (i) a list of the street addresses of all real property leased or occupied by Seller (other than the Owned Real Property) and used in or necessary for the operation of the College as currently operated, and the square footage of each building located on such real property (together with all rights, title and interest of Seller in and to such real property or any leasehold improvements relating thereto, including security deposits, reserves or prepaid rents paid in connection therewith, collectively, the "Leased Real Property"), and (ii) a list of all leases, subleases, licenses and concessions (whether written or oral) for each parcel of Leased Real Property, including all amendments, extensions renewals, guaranties and other agreements with respect thereto, pursuant to which Seller holds any Leased Real Property (collectively, the "Leases"). Seller has delivered to Buyer a true and complete copy of each Lease.

(c) Except as set forth in Section 4.10(c) of the Disclosure Schedules, with respect to each Lease:

(i) such Lease is valid, binding, enforceable and in full force and effect in accordance with its terms, and Seller enjoys peaceful and undisturbed possession of the Leased Real Property;

(ii) Seller is not in breach or default under such Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and Seller has paid all rent due and payable under such Lease as it has become due;

(iii) Seller has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by Seller or the applicable landlord under any of the Leases and, to the Knowledge of Seller, no other party is in default thereof, and no party to any Lease has exercised any termination rights with respect thereto;
(iv) Seller has not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof; and

(v) Seller has not pledged, mortgaged or otherwise granted an Encumbrance (other than Permitted Encumbrances) on its leasehold interest in any Leased Real Property.

(d) Seller has not received any written notice of (i) violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Real Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to adversely affect the ability to operate the Real Property as currently operated. Neither the whole nor any material portion of any Real Property has been damaged or destroyed by fire or other casualty.

(e) The Real Property is sufficient for the operation of the College as currently operated.

Section 4.11 Intellectual Property.

(a) Section 4.11(a) of the Disclosure Schedules lists all Intellectual Property Registrations. All required filings and fees related to the Intellectual Property Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Intellectual Property Registrations are otherwise valid, subsisting and in good standing.

(b) Section 4.11(b) of the Disclosure Schedules lists all Intellectual Property Agreements that are material to the operations of the College. Seller has provided, or made available to, Buyer true and complete copies of all such Intellectual Property Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Intellectual Property Agreement is valid and binding on Seller and the other parties thereto in accordance with its terms and is in full force and effect. None of Seller or, to Seller’s Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of breach or default of or any intention to terminate, any Intellectual Property Agreement.

(c) Except as otherwise set forth on Section 4.11(c) of the Disclosure Schedules, Seller is the sole and exclusive legal and beneficial, and with respect to the Intellectual Property Registrations, record owner of all right, title and interest in and to the Intellectual Property Assets, and has the valid right to use all other Intellectual Property which is used or held for use in connection with, or is necessary for the operation of the College as currently operated, in each case, free and clear of Encumbrances other than Permitted Encumbrances.

(d) The Intellectual Property Assets, and the Intellectual Property licensed under the Intellectual Property Agreements (the “Licensed Intellectual Property”), are sufficient to operate the College as presently conducted. Each item of the Intellectual Property Assets and Licensed Intellectual Property will be owned or available for use, as applicable, by
Buyer on materially identical terms following the consummation of the transactions contemplated hereunder.

(e) Seller’s rights in the Intellectual Property Assets are valid, subsisting and enforceable. Except as otherwise set forth on Section 4.11(e) of the Disclosure Schedules, or as would not reasonably be expected to have a Material Adverse Effect, (i) Seller has taken all reasonable steps to maintain the Intellectual Property Assets and Licensed Intellectual Property and to protect and preserve the confidentiality of all trade secrets and other confidential information included therein, and, (ii) to Seller’s Knowledge, there has been no unauthorized disclosure or use of, or access to, any such trade secrets or other confidential information.

(f) Except as otherwise set forth on Section 4.11(f) of the Disclosure Schedules, to Seller’s Knowledge, (i) the operation of the College of Seller as currently operated, and the Intellectual Property Assets and Licensed Intellectual Property as currently owned, licensed or used by Seller, does not infringe, misappropriate, dilute or otherwise violate, the Intellectual Property rights of any Person; and (ii) no Person is infringing, violating or misappropriating any Intellectual Property Assets.

(g) There have been and are no Actions (including any oppositions, interferences or re-examinations) settled, pending or, to Seller’s Knowledge, threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, dilution or other violation of the Intellectual Property of any Person by Seller in connection with the College; (ii) challenging the legality, validity, enforceability, registrability or ownership of any Intellectual Property Assets or Licensed Intellectual Property, or Seller’s rights with respect to any Intellectual Property Assets or Licensed Intellectual Property; or (iii) by Seller or any other Person alleging any infringement, misappropriation, dilution or other violation by any Person of any Intellectual Property Assets or Licensed Intellectual Property, nor to Seller’s Knowledge is there any basis for such an Action. To the Knowledge of Seller, neither Seller, nor any Intellectual Property Asset or Licensed Intellectual Property, is subject to any outstanding Governmental Order (including any motion or petition therefor) that does or would materially restrict or impair the ownership, use or other exploitation of any Intellectual Property Asset or Licensed Intellectual Property material to the operation of the College as presently conducted.

(h) Except as set forth on Section 4.11(h) of the Disclosure Schedules: (i) the consummation of the transactions contemplated hereunder will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, the right of Buyer to own, use or hold for use any Intellectual Property as owned, used or held for use by Seller in the operation of the College as currently operated; and (ii) the transactions contemplated under this Agreement will not require any consent to be obtained or any fee or similar payment to be paid to any third party by reason of any agreement relating to Intellectual Property nor will they give rise to any right of any third party to modify or terminate any rights or obligations under any agreement relating to Intellectual Property.

Section 4.12 Insurance. Section 4.12 of the Disclosure Schedules sets forth (a) a true and complete list of all current policies or binders of fire, liability, product liability, umbrella
liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by Seller and relating to the assets, business, operations, employees, officers, directors and trustees of Seller (collectively, the "Insurance Policies")); and (b) a list of all pending claims and the claims history for Seller since January 1, 2015. Such Insurance Policies are in full force and effect on the date of this Agreement and all premiums due on such Insurance Policies have been paid as and when such premiums become due (including the current portion due under any applicable premium installment payment plans).

Section 4.13 Legal Proceedings; Governmental Orders.

(a) There are no Actions pending or, to Seller's Knowledge, threatened against or by Seller (i) relating to or affecting any of the College, the Purchased Assets, or the Assumed Liabilities; or (ii) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the Knowledge of Seller, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the College or the Purchased Assets.

Section 4.14 Compliance With Laws; Permits.

(a) Except as set forth in Section 4.14(a) of the Disclosure Schedules, Seller has complied, and is now complying, in all material respects with all Laws applicable to the operation of the College as currently operated or the ownership and use of the Purchased Assets except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect.

(b) All Permits required for Seller to operate the College as currently operated or for the ownership and use of the Purchased Assets have been obtained by Seller and are valid and in full force and effect, except where the failure to obtain or maintain such Permits would not reasonably be expected to have a Material Adverse Effect and Seller is in compliance in all material respects with all terms and requirements of each such Permit. Section 4.14(b) of the Disclosure Schedules lists all current Permits issued to Seller that are necessary for the operation of the College as currently operated or the ownership and use of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. To Seller's Knowledge, no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 4.14(b) of the Disclosure Schedules.

(c) Neither Seller nor any of its respective trustees, directors, officers, managers, employees or agents have directly or indirectly:

(i) offered, paid or promised to unlawfully pay, or authorized the unlawful payment of, any money or other thing of value (including any entertainment, fee, gift, sample or travel expense or commission), or used any corporate or other funds to make unlawful or corrupt contributions, payments, or gifts, to a Person who is an official or a representative of
any Governmental Authority or of any existing or prospective customer (whether government owned or otherwise), any political party, any candidate for political or political party office or any third party affiliate with any of the foregoing;

(ii) made any unlawful or corrupt contribution, payment or gift in violation of the Foreign Corrupt Practices Act of 1977, 15 U.S.C. Section 78dd-1, et seq. or any other applicable Law; or

(iii) received any unlawful or unauthorized contributions, payments, expenditures, gifts or entertainment.

Section 4.15 Environmental Matters.

(a) Except as set forth in Section 4.15(a) of the Disclosure Schedules, or as would not have a Material Adverse Effect, the operations of Seller with respect to the College and the Purchased Assets are currently and have been in compliance with all applicable Environmental Laws. Seller has not received from any Person, with respect to the College or the Purchased Assets, any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Seller has obtained and is in material compliance with all Environmental Permits (each of which is disclosed in Section 4.15(b) of the Disclosure Schedules) necessary for the operation of the College as currently operated or the ownership, lease, operation or use of the Purchased Assets and all such Environmental Permits are in full force and effect, and shall be maintained in full force and effect by Seller through the Closing Date in accordance with applicable Environmental Law, and Seller is not aware of any environmental condition, event or circumstance that might prevent or impede, after the Closing Date, the operation of the College as currently operated or the ownership, lease, operation or use of the Purchased Assets; Section 4.15(b) of the Disclosure Schedules contains a list of any such Environmental Permits that are required to be transferred upon a change or control, and Seller is not aware of any condition, event or circumstance that might prevent or impede the transferability of the same. Seller has not received any Environmental Notice or written communication regarding the status or terms and conditions of any such Environmental Permit that would reasonably be expected to have a Material Adverse Effect. To the extent that any Environmental Permit constitutes a Purchased Asset and will expire after the Closing Date but with respect to which an application to renew was due prior to the Closing Date, Seller has submitted an application to renew such Environmental Permit(s), and Seller shall reasonably cooperate with Buyer, at Buyer’s cost and expense, in the renewal of any such Environmental Permit(s).

(c) None of the College or the Purchased Assets or any real property currently or formerly owned, leased or operated by Seller in connection with the College is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) There has been no Release of Hazardous Materials with respect to the College or the Purchased Assets or any real property currently or formerly owned, or, to Seller’s
Knowledge, leased, operated, occupied, or utilized by Seller or its Affiliates in connection with
the College, and Seller has not received an Environmental Notice that any real property currently
or formerly owned, leased or operated in connection with the College or the Purchased Assets
(including soils, groundwater, surface water, buildings and other structure located thereon) has
been contaminated with any Hazardous Material which could reasonably be expected to result in
an Environmental Claim against, or a violation of Environmental Law or term of any
Environmental Permit by, Seller or its Affiliates.

(e) Section 4.15(e) of the Disclosure Schedules contains a complete and
accurate list of all active or abandoned aboveground or underground storage tanks owned or
operated by Seller in connection with the College or the Purchased Assets.

(f) Section 4.15(f) of the Disclosure Schedules contains a complete and
accurate list of all offsite Hazardous Materials treatment, storage, or disposal facilities or
locations used by Seller or its predecessors-in-interest in connection with the College, and none
of these facilities or locations has been placed on, or to the Knowledge of Seller has been
proposed for placement on, the National Priorities List (or CERCLIS) under CERCLA, or any
similar state list, and Seller has not received any Environmental Notice regarding potential
liabilities with respect to such offsite Hazardous Materials treatment, storage, or disposal
facilities or locations used by Seller, if any.

(g) Seller has not retained or assumed, by contract or operation of Law (other
than with respect to an event set forth on Section 4.6(s) of the Disclosure Schedules), any
liabilities or obligations of third parties under Environmental Law.

(h) Seller has provided to Buyer and listed in Section 4.15(h) of the
Disclosure Schedules: (i) any and all environmental reports, studies, audits, records, sampling
data, site assessments, risk assessments, economic models and other similar documents with
respect to the College or the Purchased Assets or any real property currently or formerly owned,
leased or operated by Seller in connection with the College which are in the possession or control
of Seller related to compliance with Environmental Laws, Environmental Claims or an
Environmental Notice or the Release of Hazardous Materials; and (ii) any and all documents
concerning planned or anticipated capital expenditures required to reduce, offset, limit or
otherwise control pollution and/or emissions, manage waste or otherwise ensure compliance with
current or future Environmental Laws (including costs of remediation, pollution control
equipment and operational changes).

(i) Seller is not aware of or reasonably anticipates, as of the Closing Date,
any condition, event or circumstance concerning the Release of Hazardous Materials that would
reasonably be expected, after the Closing Date, to prevent, impede or materially increase the
costs associated with the ownership, lease, operation, performance or use of the College or the
Purchased Assets as currently carried out.

Section 4.16 Employee Benefit Matters.

(a) Section 4.16(a) of the Disclosure Schedules contains a true and complete
list of each pension, benefit, retirement, compensation, employment, consulting, profit sharing,
deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock based, change in control, retention, severance, vacation, paid time off, welfare, fringe benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not tax qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by Seller for the benefit of any current or former employee, officer, director, trustee, retiree, independent contractor or consultant of the College or any spouse, beneficiary or dependent of such individual, or under which Seller or any of its ERISA Affiliates has or may have any Liability, or with respect to which Buyer or any of its Affiliates would reasonably be expected to have any Liability following the Closing Date, contingent or otherwise (as listed on Section 4.16(a) of the Disclosure Schedules, each, a “Benefit Plan”). Seller has separately identified in Section 4.16(a) of the Disclosure Schedules each Benefit Plan that contains a change in control provision. No Benefit Plan is maintained, sponsored, contributed to, or required to be contributed to by Seller primarily for the benefit of employees of the College outside of the United States (a “Non-U.S. Benefit Plan”). Section 4.16(a) of the Disclosure Schedules contains a true and complete list of each employee that receives fringe benefits identifying the applicable fringe benefit received by each such employee.

(b) With respect to each Benefit Plan, Seller has made available to Buyer accurate, current and complete copies of each of the following: (i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements and similar agreements, and investment management or investment advisory agreements, now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise; (iv) copies of any summary plan descriptions, summaries of material modifications, employee handbooks and any other written communications (or a description of any oral communications) relating to any Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service; (vi) in the case of any Benefit Plan for which a Form 5500 is required to be filed, a copy of the two most recently filed Form 5500, with schedules and financial statements attached; (vii) actuarial valuations and reports related to any Benefit Plans with respect to the most recently completed plan years if required by law; (viii) the most recent nondiscrimination tests performed under the Code if required by law; (ix) any information reasonably requested by Buyer to properly credit Seller’s employees with hours of service for purposes of the employer shared responsibility provisions of Code Section 4980H and any guidance issued thereunder; and (x) copies of material notices, letters or other correspondence from the Internal Revenue Service, Department of Labor, Pension Benefit Guaranty Corporation, Health and Human Service, including the Office of Civil Rights, or other Governmental Authority relating to the Benefit Plan.

(c) Except as set forth in Section 4.16(c) of the Disclosure Schedules, (i) each Benefit Plan and related trust (other than any multiemployer plan within the meaning of Section 3(37) of ERISA (each a “Multiemployer Plan”)) has been established, administered and maintained in accordance with its terms, any applicable collective bargaining agreement and in
compliance with all applicable Laws (including ERISA, the Code, the Affordable Care Act, the Health Insurance Portability and Accountability Act, as amended ("HIPAA") and any applicable local Laws); and (ii) each Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a "Qualified Benefit Plan") is so qualified and has received a favorable and current determination letter from the Internal Revenue Service, or with respect to a prototype or volume submitter plan, can rely on an opinion or advisory letter from the Internal Revenue Service to the prototype plan sponsor or volume submitter practitioner, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that could reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan. Nothing has occurred with respect to any Benefit Plan that has subjected or could reasonably be expected to subject Seller or any of its ERISA Affiliates or, with respect to any period on or after the Closing Date, Buyer or any of its Affiliates, to any tax or penalty for a failure to comply with ERISA, the Code, or any applicable law, including, without limitation a penalty under Section 502 of ERISA or a tax or penalty under Section 4975 of the Code, or a civil monetary penalty or other liability arising out of HIPAA. Seller has complied in all respects with the Affordable Care Act such that Seller cannot be subject to an assessable payment under Section 4980H of the Code or any other fee, tax, excise tax, interest, or penalty under, or for, a violation of any provision of the Affordable Care Act. All benefits, contributions and premiums relating to each Benefit Plan have been timely paid in accordance with the terms of such Benefit Plan and all applicable Laws and accounting principles, and all benefits accrued under any unfunded Benefit Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with GAAP.

(d) Neither Seller nor any of its ERISA Affiliates has (i) incurred or reasonably expects to incur, either directly or indirectly, any material Liability under Title I or Title IV of ERISA or related provisions of the Code or applicable local Law relating to employee benefit plans; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (iii) withdrawn or partially withdrawn from any Benefit Plan; (iv) engaged in any transaction which would give rise to Liability under Section 4069 or Section 4212(c) of ERISA; or (v) ever participated in or had any Liability with respect to a Multiemployer Plan.

(e) With respect to each Benefit Plan (i) no such plan is a Multiemployer Plan; (ii) no such plan is a “multiple employer plan” within the meaning of Section 413(c) of the Code or a “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA); (iii) no Action has been threatened or initiated, or could reasonably be expected to be threatened or initiated, by the Pension Benefit Guaranty Corporation to terminate any such plan or to appoint a trustee for any such plan; and (iv) no such plan is subject to the minimum funding standards of Section 412 of the Code or Title IV of ERISA, and none of the College, the Purchased Assets or any ERISA Affiliate is, or may reasonably be expected to become, the subject of any lien arising under Section 302 of ERISA or Section 412(a) of the Code or otherwise with respect to any Benefit Plan.

(f) Except as set forth in Section 4.16(f) of the Disclosure Schedules, other than as required under Section 601 et. seq. of ERISA or other applicable Law, no Benefit Plan or other arrangement provides post termination or retiree welfare benefits to any individual for any
reason, and no communication has been made that could reasonably be expected to promise such benefits.

(g) There is no pending or, to Seller's Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan has within the seven (7) years prior to the date hereof been: (i) the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under, or (ii) a participant in an amnesty, voluntary compliance or, except as set forth in Section 4.16(g) of the Disclosure Schedules, self-correction or similar program sponsored by any Governmental Authority.

(h) There has been no amendment to, announcement by Seller or any of its Affiliates relating to, or change in employee participation or coverage under, any Benefit Plan or collective bargaining agreement that would increase the annual expense of maintaining such plan above the level of the expense incurred for the most recently completed fiscal year with respect to any director, trustee, officer, employee, consultant or independent contractor (or dependents, spouses or beneficiaries of any of the foregoing) of the College, as applicable. None of Seller nor any of its Affiliates has any commitment or obligation or has made any representations to any director, trustee, officer, employee, consultant or independent contractor (or dependents, spouses or beneficiaries of any of the foregoing) of the College, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement.

(i) Except as set forth in Section 4.16(i) of the Disclosure Schedules, each Benefit Plan that is subject to Section 409A of the Code has been administered in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including, notices, rulings and proposed and final regulations) thereunder. Seller does not have any obligation to gross up, indemnify or otherwise reimburse any individual for any taxes, additional taxes, excise taxes, interest, penalties or other amounts incurred pursuant to Section 409A of the Code.

(j) Each individual who is classified as an independent contractor of the College has been properly classified for purposes of participation and benefit accrual under any applicable Benefit Plan.

(k) Except as set forth in Section 4.16(k) of the Disclosure Schedules, neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, trustee, officer, employee, independent contractor or consultant of the College to severance pay or any other payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation due to any such individual; (iii) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; (iv) result in “excess parachute payments” within the meaning of Section 280G(b) of the Code; or (v) require a “gross up” or other payment to any “disqualified individual” within the meaning of Section 280G(c) of the Code.

Section 4.17 Employment Matters.

(a) Section 4.17(a) of the Disclosure Schedules contains a list of:
(i) all individuals who are employees of Seller as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (1) name; (2) title or position (including whether full or part time); (3) hire date; (4) current annual base compensation rate; (5) commission, bonus or other incentive-based compensation paid to such employee in the most recent fiscal year of Seller; and (6) whether such employee is classified as exempt or non-exempt; and

(ii) all individuals who are independent contractors of Seller as of the date hereof, and sets forth for each such individual the following: (1) name; (2) current annual base compensation or other compensation rate; (3) commission, bonus or other incentive-based compensation paid to such contractor in the most recent fiscal year of Seller.

As of the date hereof, all compensation, including wages, commissions and bonuses payable to all employees, independent contractors or consultants of Seller for services performed on or prior to the date hereof have been paid in full (or accrued in full on the balance sheet of Seller) and there are no outstanding agreements, understandings or commitments of Seller with respect to any compensation, commissions or bonuses.

(b) Seller is not, and has not been for the past three years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, “Union”), and there is not, and has not been for the past three years, any Union representing or purporting to represent any employee of Seller or the College, and, to Seller’s Knowledge, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. There has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting Seller or any employees of the College. Neither Seller nor the College has have a duty to bargain with any Union.

(c) Seller is and has been in compliance in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to employees of the College, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers’ compensation, leaves of absence and unemployment insurance. All individuals characterized and treated by Seller as consultants or independent contractors of the College are properly treated as independent contractors under all applicable Laws. All employees of the College classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified. Except as set forth in Section 4.17(c) of the Disclosure Schedules, there are no Actions against Seller pending, or to Seller’s Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of the College, including any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay, wages and hours or any other employment related matter arising under applicable Laws.
(d) Seller has complied with the WARN Act, and it has no plans to undertake any action in the future that would trigger the WARN Act.

(e) With respect to any Government Contract, Seller is and has been in compliance with Executive Order No. 11246 of 1965 ("E.O. 11246"), Section 503 of the Rehabilitation Act of 1973 ("Section 503") and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA"), including all implementing regulations. To the extent required to do so, Seller maintains and complies in all material respects with affirmative action plans in compliance with E.O. 11246, Section 503 and VEVRAA, including all implementing regulations. Seller is not, and has not been for the past three (3) years, the subject of any audit, investigation or enforcement action by any Governmental Authority in connection with a Government Contract or related compliance with E.O. 11246, Section 503 and VEVRAA other than routine audits not resulting in any further enforcement action against Seller. Seller has not been debarred, suspended or otherwise made ineligible from doing business with the United States government or any government contractor.

Section 4.18 Taxes.

(a) Except as set forth in Section 4.18(a) of the Disclosure Schedules:

(i) Seller has filed (taking into account any valid extensions) all material Tax Returns required to be filed by Seller. Such Tax Returns are true, complete and correct in all material respects. Seller is not currently the beneficiary of any extension of time within which to file any material Tax Return. All material Taxes due and owing by Seller have been paid.

(ii) No claim has ever been made by an authority in a jurisdiction where Seller does not file Tax Returns that Seller is or may be subject to taxation by that jurisdiction. There are no liens (other than Permitted Encumbrances) on any of the assets of Seller that arose in connection with any failure (or alleged failure) by Seller to pay any Tax.

(iii) Seller has withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, owner, or other third party, and all IRS Forms W2 and 1099 required with respect thereto have been properly completed and timely (with extensions) provided to the applicable payee and filed with the applicable Taxing authorities.

(iv) No examination or audit of any of Seller’s Tax Returns by any Governmental Authority relating to the College or any of the Purchased Assets is currently in progress or, to the Knowledge of Seller, threatened or contemplated. There are no deficiencies for any amount of Taxes claimed, proposed or assessed by or with respect to the College or the Purchased Assets that have not been fully paid, settled or accrued for on the Balance Sheet.

(v) Seller has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, which waiver or extension is still in effect.
(vi) Seller does not own any interest in an entity, and is not a party to any contractual arrangement or joint venture or other arrangement that is or could be characterized as a partnership for U.S. federal income Tax purposes.

(b) Section 4.18(b) of the Disclosure Schedules lists all federal, state, local, and non-U.S. income Tax Returns filed by Seller for taxable periods ended on or after December 31, 2014, and indicates such of those Tax Returns that have been audited or that are currently the subject of audit.

(c) The unpaid Taxes of Seller (1) did not, as of the Balance Sheet Date, exceed the reserve for Tax liabilities (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Balance Sheet (rather than in any notes thereto), and (2) will not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with the past practice of Seller in filing its Tax Returns.

(d) Seller is not a foreign person within the meaning of Treasury Regulation Section 1.1445-2(b).

Section 4.19 Broker. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller.

Section 4.20 Bank Accounts, Letters of Credit and Powers of Attorney. Section 4.20 of the Disclosure Schedules lists: (a) all bank accounts, lock boxes and safe deposit boxes relating to the business and operations of Seller (including the name of the bank or other institution where such account or box is located and the name and address of each authorized signatory thereto), (b) all outstanding letters of credit issued by financial institutions for the account of Seller (setting forth, in each case, the financial institution issuing such letter of credit, the maximum amount available and the amounts outstanding under such letter of credit, the terms (including the expiration date) of such letter of credit and the party or parties in whose favor such letter of credit was issued), and (c) the name of each person who has a power of attorney to act on behalf of Seller with respect to the foregoing.

Section 4.21 IT Systems; Privacy and Personal Information.

(a) The Software, systems, servers, network equipment and other information technology systems owned, leased or licensed by Seller ("IT Systems") are adequate for the operation of the College as currently operated. Except as set forth on Section 4.21 of the Disclosure Schedules, to the Knowledge of Seller, there has been no material breach or violation of any security policies and procedures or unauthorized intrusions or breaches of the security of the IT Systems (or any Software, information or data stored thereon).

(b) Seller takes commercially reasonable actions and measures to protect the confidentiality, performance, integrity and security of the IT Systems and all Software, information or data stored or contained therein or transmitted thereby from any unauthorized use, access, interruption or modification by third parties and complies with all relevant Law with
regard to the transmission and storage of such information except where such failure would not reasonably be expected to have a Material Adverse Effect. Since January 1, 2015, there has been no failure of any IT Systems which has had a Material Adverse Effect.

(c) The College has a privacy policy (the “Privacy Policy”) regarding the collection and use of personally identifiable information (“Personal Information”). The College has established and maintains commercially reasonable administrative, technical and physical safeguards and is in material compliance with all applicable Information Privacy and Security Laws regarding the collection, use and protection of Personal Information and with the College’s Privacy Policy, and, to the Knowledge of Seller, no Person has gained unauthorized access to or made any unauthorized use of any such Personal Information maintained by the College. The College has implemented commercially reasonable security measures to protect Personal Information stored in its computer systems from unlawful use by any third party or any other use by a third party that would violate the Privacy Policy. The execution, delivery and performance of the Transaction Documents and the consummation of the transactions contemplated hereby do not violate the Privacy Policy as it currently exists or as it existed at any time during which any Personal Information was collected or obtained by the College and, upon Closing, Buyer will own all such Personal Information and continue to have the right to use such Personal Information on identical terms and conditions as the College enjoyed immediately prior to the Closing. No Actions are pending or, to the Knowledge of Seller, threatened against Seller or the College relating to the collection or use of Personal Information.

Section 4.22 Solvency. Seller is not now insolvent, nor will it be rendered insolvent by the transactions contemplated hereby. As used herein, “insolvent” means that the sum of the present fair value of the assets of a Person does not exceed such Person’s debts and other probable liabilities.

Section 4.23 Disclosure. No representation or warranty by Seller in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this ARTICLE V are true and correct as of the date hereof.

Section 5.1 Organization of Buyer. Buyer is a non-stock corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware.

Section 5.2 Authority of Buyer. Buyer has full corporate power and authority to enter into this Agreement and the other Transaction Documents to which such Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and
any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against Buyer in accordance with its terms.

Section 5.3  No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation by Buyer of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by laws or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under any material Contract to which Buyer is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

Section 5.4  Brokers. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

Section 5.5  Legal Proceedings. There are no Actions pending or, to Buyer’s knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

ARTICLE VI
COVENANTS

Section 6.1  Operation of College Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall (i) operate the College in the ordinary course of business consistent with past practice; and (ii) use commercially reasonable efforts to maintain and preserve intact its current College organization, operations and franchise, insurance policies, risk management practices and compliance programs, and preserve the rights, franchises, goodwill and relationships of its employees, students, faculty, lenders, suppliers, regulators and others having relationships with the College.
Without limiting the generality of the foregoing, from the date hereof until the Closing Date, except as consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller not to take any action that would cause any of the changes, events or conditions described in Section 4.6 to occur. Buyer and Seller shall cooperate to develop a business plan for the College and the Purchased Assets.

Section 6.2 Access to Information. From the date hereof until the Closing, Seller shall: (a) afford Buyer and its Representatives reasonable access to and the right to inspect all of the Real Property, properties, assets, premises, Books and Records, Contracts and other documents and data related to the College; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the College as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Seller to cooperate with Buyer in its investigation of the College provided, however, that any such investigation shall be conducted during normal business hours upon reasonable advance notice to Seller and in such a manner as not to interfere with the normal operations of Seller. Without limiting the foregoing, Seller shall permit Buyer and its Representatives to conduct environmental due diligence of the Real Property, including the collecting and analysis of samples of indoor or outdoor air, surface water, groundwater or surface or subsurface land on, at, in, under or from the Real Property. Any investigation pursuant to this Section 6.2 shall be conducted in such manner as not to interfere unreasonably with the operation of the College. Buyer shall, and shall cause its Representatives to, abide by the terms of the Confidentiality Agreement with respect to any access or information provided hereunder. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement.

Section 6.3 No Solicitation of Other Bids.

(a) Seller shall not, and shall not authorize or permit any of its Affiliates or any of its Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Seller shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, “Acquisition Proposal” means any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) concerning (i) a merger, consolidation, liquidation, recapitalization or other business combination transaction involving Seller or the College; (ii) the sale, issuance or acquisition of Seller or the College; or (iii) the sale, lease, exchange or other disposition of any significant portion of the Purchased Assets.

(b) In addition to the other obligations under this Section 6.3, Seller shall promptly (and in any event within two Business Days after receipt thereof by Seller or its Representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and
conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) Seller agrees that the rights and remedies for noncompliance with this Section 6.3 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

Section 6.4 Notice of Certain Events.

(a) From the date hereof until the Closing, Seller shall promptly notify Buyer in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Seller hereunder not being true and correct in all material respects, or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.1 or Section 7.2 to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Authority or Accreditation Authority in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced or, to Seller’s Knowledge, threatened against, relating to or involving or otherwise affecting the College, the Purchased Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.13 or that relates to the consummation of the transactions contemplated by this Agreement.

(v) Buyer’s receipt of information pursuant to this Section 6.4 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement and shall not be deemed to amend or supplement the Disclosure Schedules.

Section 6.5 Employees and Employee Benefits.

(a) Buyer, or an Affiliate of Buyer, will present offers of employment on an “at will” basis, effective on or after the Closing Date, to those employees of the College (the “Retained Employees”) who the Buyer determines, in its sole discretion, to retain. To the extent Buyer determines not to retain any employees of the College as of the Closing Date, Buyer shall provide Seller with sufficient advance notice of such termination in order to allow Seller to
provide such employees with all necessary notices in accordance with applicable Contracts or Laws.

(b) Buyer shall, or shall cause an Affiliate of Buyer to, provide each Retained Employee with: (i) base salary or hourly wages which are no less than the base salary or hourly wages provided by Seller immediately prior to the Closing but in any event on substantially similar terms as provided to similarly situated employees of Buyer or an Affiliate of Buyer; (ii) retirement and welfare benefits that are no less favorable in the aggregate than those provided to similarly situated employees of Buyer or an Affiliate of Buyer; and (iii) severance benefits that are no less favorable than the practice, plan or policy in effect with respect to similarly situated employees of Buyer or an Affiliate of Buyer.

(c) With respect to any employee benefit plan maintained by Buyer or an Affiliate of Buyer for the benefit of any Retained Employee, effective as of the Closing, Buyer shall, or shall cause its Affiliate to, recognize all service of the Retained Employees with Seller, as if such service were with Buyer, for vesting and eligibility purposes; provided, however, such service shall not be recognized to the extent that (i) such recognition would result in a duplication of benefits or (ii) such service was not recognized under the corresponding Benefit Plan of Seller.

(d) Prior to Closing, Buyer shall determine the benefits to be provided to Retained Employees, and unless otherwise decided by Buyer, those Retained Employees shall cease participation in the Benefits Plans. Notwithstanding the foregoing, Seller shall remain liable for all claims for benefits under the Benefit Plans that are incurred by its employees prior to the Closing Date. For purposes of this Agreement, the following claims shall be deemed to be incurred as follows: (i) life, accidental death and dismemberment, short-term disability, and workers' compensation insurance benefits, on the event giving rise to such benefits; (ii) medical, vision, dental, and prescription drug benefits, on the date the applicable services, materials or supplies were provided; and (iii) long-term disability benefits, on the eligibility date determined by the long-term disability insurance carrier for the plan in which the applicable employee participates.

(e) This Section 6.5 shall be binding upon and inure solely to the benefit of each of the parties to this Agreement, and nothing in this Section 6.5, express or implied, shall confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section 6.5. Nothing contained herein, express or implied, shall be construed to establish, amend or modify any benefit plan, program, agreement or arrangement. The parties hereto acknowledge and agree that the terms set forth in this Section 6.5 shall not create any right in any Retained Employee or any other Person to any continued employment with Buyer or any of its Affiliates or compensation or benefits of any nature or kind whatsoever.

Section 6.6 Confidentiality.

(a) Seller and Buyer acknowledge and agree that the Confidentiality Agreement remains in full force and effect, is applicable to the College, and, in addition, covenants and agrees to keep confidential, in accordance with the provisions of the Confidentiality Agreement, information provided to Buyer pursuant to this Agreement. If this
Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement and the provisions of this Section 6.6(a) shall nonetheless continue in full force and effect.

(b) From and after the Closing, Seller shall, and shall cause its respective Affiliates to, hold, and shall use their reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the College, except to the extent that Seller can show that such information (a) is generally available to and known by the public through no fault of Seller, any of its Affiliates or their respective Representatives; or (b) is lawfully acquired by Seller, any of its Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Seller or any of its respective Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Seller shall promptly notify Buyer in writing and shall disclose only that portion of such information which Seller is advised by its counsel in writing is legally required to be disclosed, provided that that Seller shall use reasonable efforts to obtain an appropriate protective order or other reasonable assurance, at Buyer’s cost and expense, that confidential treatment will be accorded such information. Seller acknowledges that a breach or threatened breach of this Section 6.6(b) would give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Seller of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

Section 6.7 Governmental and Accreditation Approvals and Consents.

(a) Each Party shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Law or Accreditation Authority applicable to such Party or any of its Affiliates; and (ii) use reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities and Accreditation Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the other Transaction Documents. Each Party shall cooperate fully with the other Parties in promptly seeking to obtain all such consents, authorizations, orders and approvals. The Parties shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) Seller and Buyer shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 4.3 of the Disclosure Schedules.

(c) Without limiting the generality of the Parties’ undertakings pursuant to subsections (a) and (b) above, each of the Parties shall use reasonable best efforts to:
(i) respond to any inquiries by any Governmental Authority or Accreditation Authority regarding matters with respect to the transactions contemplated by this Agreement or any other Transaction Document;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any other Transaction Document; and

(iii) in the event any Governmental Order or accreditation determination adversely affecting the ability of the Parties to consummate the transactions contemplated by this Agreement or any other Transaction Document has been issued, to have such Governmental Order or accreditation determination vacated or lifted.

(d) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of any Party before any Governmental Authority, Accreditation Authority or the staff or regulators of any Governmental Authority or Accreditation Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Seller or Buyer with Governmental Authorities or Accreditation Authority in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other Parties in advance of any filing, submission or attendance, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each Party shall give notice to the other Parties with respect to any meeting, discussion, appearance or contact with any Governmental Authority or Accreditation Authority or the staff or regulators of any Governmental Authority or Accreditation Authority, with such notice being sufficient to provide the other Parties with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(e) Notwithstanding the foregoing, nothing in this Section 6.7 shall require, or be construed to require Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer or any of its respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement and the other Transaction Documents; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

Section 6.8 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of seven (7) years after the Closing, Buyer shall:
(i) retain the Books and Records (including personnel files) relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of Seller; and

(ii) upon reasonable notice, afford to the Representatives of Seller reasonable access (including the right to make, at Seller’s expense, photocopies), during normal business hours, to such Books and Records.

(b) Buyer shall not be obligated to provide Seller’s Representatives with access to any books or records (including personnel files) pursuant to this Section 6.8 where such access would violate any Law.

Section 6.9  Closing Conditions. From the date hereof until the Closing, each Party shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in ARTICLE VII.

Section 6.10  Public Announcements. The Parties shall not make, and shall not allow their Affiliates or representatives to make, any press release or other public statements with respect to the transactions contemplated hereby without the consent of both Parties leadership. Nothing herein shall prevent or restrict Buyer from making any press release or public statement with respect to the transactions contemplated hereby.

Section 6.11  Tax Matters.

(a) Indemnification for Taxes. Seller shall indemnify Buyer and hold it harmless from and against (i) all Taxes of Seller or relating to the College for all Tax periods (or portions thereof) ending on or prior to the Closing Date; and (ii) any and all Taxes of Seller or any other Person imposed on Buyer arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing Date. In each of the above cases, Seller shall reimburse Buyer for any Taxes of Seller that are the responsibility of Seller pursuant to this Section 6.11, together with any out-of-pocket fees and expenses (including reasonable attorneys’ fees and accountants’ fees) incurred by Buyer in connection therewith, within ten (10) Business Days after payment of such Taxes and/or expenses by Buyer.

(b) Transfer Taxes. All sales, use and transfer Taxes, including any value added, gross receipts, stamp duty and real, personal, or intangible property transfer Taxes (collectively, “Transfer Taxes”), due by reason of the consummation of the transfer of the P Assets hereunder, including any interest or penalties in respect thereof, shall be borne equally by Seller on the one hand and Buyer on the other hand. Seller and Buyer shall cooperate with each other, file all necessary documents in connection with such Transfer Taxes, and use their commercially reasonable efforts to minimize the Transfer Taxes attributable to the transfer of the Purchased Assets.

(c) Proration of Real and Personal Property Taxes. Real and personal property Taxes and assessments on the Purchased Assets shall be prorated between Buyer and Seller as of the Closing Date. All such prorations shall be allocated so that items relating to time periods ending on or prior to the Closing Date shall be allocated to Seller and items relating to
time periods beginning after the Closing Date shall be allocated to Buyer, provided, however, that the Parties shall allocate any real property Tax in accordance with Section 164(d) of the Code. The amount of all such prorations shall be settled and paid on the Closing Date, provided that final payments with respect to prorations that are not able to be calculated as of the Closing Date shall be calculated and paid as soon as practicable thereafter.

Section 6.12 Further Assurances. Following the Closing, each of the Parties shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

Section 6.13 Use of Proprietary Names. Except as set forth in the Transaction Documents, effective as of the Closing, and agreed upon prior to closing, parties will have determined and implemented a means to identify Seller as part of Buyer’s system, consistent with being incorporated as a member of Buyer’s system, Seller shall discontinue the use of all of the Intellectual Property Assets included in the Purchased Assets, including, without limitation, usage of trademarks, tradenames, service marks and service names of Seller or with respect to the College, in any of their forms or spellings, on all advertising, stationery, business cards, checks, purchase orders and acknowledgments, customer agreements and other contracts and business documents.

Section 6.14 Delivery of Disclosure Schedules.

(a) Seller shall deliver the Disclosure Schedules to Buyer on or before the date that is sixty (60) days after the date hereof (the “Schedule Deadline”).

(b) From time to time, but no later than five (5) Business Days prior to the Closing, Seller shall have the right (but not the obligation) to supplement or amend the Disclosure Schedules hereto with respect to any matter hereafter arising or of which it becomes aware after the date that the Disclosure Schedules are delivered to the Buyer under Section 6.14(a) (each a “Schedule Supplement”). Notwithstanding the foregoing, for purposes of determining whether or not the conditions set forth in Section 7.2 have been satisfied, such Schedule Supplement shall (for the purposes of Section 7.2 only) not be deemed to cure the breach of any such representation or warranty, satisfy the otherwise unsatisfied conditions, and amend/or supplement the Disclosure Schedules related to such representation, warranty or condition, unless Buyer shall agree to such Schedule Supplement and the specific effect of such Schedule Supplement in writing.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.1 Conditions to Obligations of All Parties. The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to: i) the
approval of the Accreditation Agency and any Governmental Authority whose approval to all or any portion of the transactions contemplated hereunder is required; and ii) no Governmental Authority having enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

Section 7.2 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer’s waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Seller contained in Section 4.1 and Section 4.2, the representations and warranties of Seller contained in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the dates referenced in the introduction to ARTICLE IV and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Seller contained in Section 4.1 and Section 4.2 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). Buyer shall have received a certificate to that effect dated the Closing Date and signed by Seller.

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied by it prior to or on the Closing Date provided, that, with respect to agreements, covenants and conditions that are qualified by materiality, Seller shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) Buyer shall have secured funding from a public or private source in an amount sufficient, in Buyer’s sole discretion, to cover (x) all anticipated costs of operating the College through the end of fiscal year 2023; (y) any Indebtedness of the College existing at the Closing Date to the extent not assumed by Buyer in its sole discretion and (z) all Transaction Expenses.

(d) No Action shall have been commenced against any Party, which would prevent the Closing or any transaction contemplated hereby and no Governmental Authority shall have threatened to commence any such Action.

(e) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the
aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(f) Seller understands and acknowledges that the Closing is dependent, among other things, upon Seller avoiding further debt and obligations beyond those known to Buyer and to be disclosed on the aforementioned schedules, and that to do so it must reduce or eliminate its anticipated operating deficit. Seller agrees to take such steps as it deems prudent and necessary during the period between the execution of this Agreement and Closing to reduce or eliminate its operating deficit. Buyer may, during such pre-Closing period, suggest actions to Seller toward that end, but Seller retains the independent decision-making as to all aspects of its operations prior to Closing.

(g) Seller shall have received all consents, authorizations, orders and approvals referred to in Section 4.3 of the Disclosure Schedules, in each case, in form and substance reasonably satisfactory to Buyer, and no such consent, authorization, order and approval shall have been revoked.

(h) Seller shall have entered into a i) new or amended lease for the Malmberg/Zimmerman Residence Hall; ii) new or amended food service agreement; and iii) new or amended information services agreement. All such new or amended agreements shall be on terms and conditions acceptable to Buyer in its sole discretion;

(i) Buyer shall have completed its due diligence review of the College and the Purchased Assets and shall have determined, in its sole discretion, that the results of such due diligence review are satisfactory;

(j) Seller shall have delivered to Buyer duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.2(a).

(k) Buyer shall have received all Permits and any other approvals that are necessary for it to conduct the College in all material respects as conducted by Seller as of the Closing Date.

(l) All Encumbrances (other than Permitted Encumbrances) relating to the Purchased Assets shall have been released in full (or will be released in full following payment of any Closing Funded Debt), and Seller shall have delivered to Buyer written evidence, in form, scope, and substance satisfactory to Buyer in its sole discretion, of the release (or promised release upon payment of such Closing Funded Debt) of such Encumbrances.

Section 7.3 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller’s waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Buyer contained in Section 5.1 and Section 5.2, the representations and warranties of Buyer contained in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or
warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer contained in Section 5.1 and Section 5.2 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date; provided, that, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) Buyer shall have delivered to Seller duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.2(b).

ARTICLE VIII
TERMINATION

Section 8.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by Buyer by written notice to Seller if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy or failure has not been cured within ten (10) days after Seller’s receipt of written notice of such breach from Buyer;

(ii) any of the conditions set forth in Section 7.1 or Section 7.2 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Expected Closing Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(iii) Buyer has not received the Disclosure Schedules by the Schedule Deadline or, (y) if, within thirty (30) days of the date that the Seller delivers the
Disclosure Schedules to Buyer, Buyer notifies Seller that the Disclosure Schedules are not satisfactory, as determined by the Buyer in its sole discretion.

(c) by Seller by written notice to Buyer if:

(i) Seller is then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy or failure has not been cured within ten days after Buyer’s receipt of written notice of such breach from a Seller; or

(ii) any of the conditions set forth in Section 7.1 or Section 7.3 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Expected Closing Date, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing.

(d) by Buyer or Seller in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

Section 8.2 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any Party except:

(a) as set forth in this ARTICLE VIII, Section 2.6 and Section 6.6 and ARTICLE IX hereof; and

(b) that nothing herein shall relieve any Party from liability for any willful breach of any provision hereof.

ARTICLE IX
MISCELLANEOUS

Section 9.1 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby (including, all legal, consulting, account and environmental investigation expenses, the “Transaction Expenses”) shall be paid by the Party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 9.2 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date
sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient (and in each case, subject to sending a duplicate of the notice by one of the other methods set forth in this Section 9.2) or (d) on the third Business Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 9.2):

If to Seller:
Robert E. Clark II, President
Wesley College
120 N State St, Dover, DE 19901

with a copy to:
Molly DiBianca, Esquire
Clark Hill PLC
824 N. Market St, Suite 710
Wilmington, DE 19801
Email: mdibianca@clarkhill.com

If to Buyer:
Tony Allen, Ph.D.
President
Delaware State University
1200 N. DuPont Highway
Dover, Delaware 19901

with a copy to:
James D. Taylor, Jr. Esquire
Saul Ewing Arnstein & Lehr, LLP
1201 Market Street, Suite 2300.
Wilmington, DE 19801
E-mail: James.Taylor@saul.com

Section 9.3 Interpretation; Disclosure Schedules. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole; and (d) whenever the phrase “made available” or “provided” is used in this Agreement in reference to particular materials, information or a document, such file, information or document shall be deemed to have been “made available” or “provided” to a Person for purposes of this Agreement if such file, information or document was provided to such Person or a Representative of such Person, or uploaded to or otherwise made available for viewing in the Data Room at least one (1) Business Day prior to the date hereof. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be
construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. All Section headings in the Disclosure Schedules correspond to Sections of this Agreement, but information provided in any Section of the Disclosure Schedules shall constitute disclosure for purposes of each other Section of this Agreement to the extent that it is reasonably apparent on the face of such disclosure that such disclosure is relevant to such other Section.

Section 9.4 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 9.5 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect 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 greatest extent possible.

Section 9.6 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 9.7 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign its rights or obligations hereunder without the prior written consent of the other Parties; provided, however, that prior to the Closing Date, Buyer may, without the prior written consent of Seller, assign all or any portion of its rights under this Agreement to one or more Affiliates. No assignment shall relieve the assigning Party of any of its obligations hereunder.

Section 9.8 No Third-party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 9.9 Amendment and Modification; Waiver. This Agreement may be amended, modified or supplemented only by an agreement in writing signed by each Party. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such
written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 9.10  Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a)  This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

(b)  ANY DISPUTE ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTemplATED HEREBY OR THEREBY SHALL BE RESOLVED SOLELY AND EXCLUSIVELY IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF DELAWARE. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY’S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN IMPROPER OR INCONVENIENT FORUM.

(c)  EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTemplATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 9.10(c).

Section 9.11  Specific Performance.  The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof
and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 9.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGES FOLLOW]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

Wesley College, Inc.

By: [Signature]

Name: Robert E. Clark II
Title: President of the College
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

Delaware State University

By: [Signature]

Name: [Name]
Title: [Title]