



**Special Board Meeting
June 28th, 2024
Idaho State Board of Education
OSBE Conference Room
650 West State Street,
Suite 307
Boise, ID 83720**

Public Streaming: <https://www.youtube.com/channel/UC7j4VGGyNzPa6g6a-zVTHnA>

Friday, June 28th, 2024 – 8:30 a.m. (MT)

BUSINESS AFFAIRS AND HUMAN RESOURCES

1. UI – University of Phoenix Amendment to Asset Purchase Agreement – Action Item

If auxiliary aids or services are needed for individuals with disabilities, please contact the Board office at 208-332-1571.

BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 28, 2024

UNIVERSITY OF IDAHO

SUBJECT

Amendment to Asset Purchase Agreement

REFERENCE

May 18, 2023

Approval of Asset Purchase Agreement

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.C.1.c Spending Authority, University of Idaho and Regents of the University of Idaho

Idaho Constitution, Article IX, Section 2. Board of Education. General supervision of the state educational institutions

Idaho Code § 30-501

BACKGROUND/DISCUSSION

The University of Idaho seeks approval from the Board of Regents for the execution of Amendment No. 1 to the Asset Purchase Agreement, which will extend the time for closing of the University of Phoenix transaction until June 10, 2025, under terms favorable to the University. The extension will allow the University time to incorporate feedback from legislators and other Idaho stakeholders into the transaction and make amendments based on the feedback. There is no commitment to a closing at this time, rather any amended transaction must come back to the Regents for consideration and approval in an open public meeting. The University seeks this approval for the following reasons:

1. Business Model Remains Intact: The University of Phoenix business model that is intended to carry forward after the closing of the transaction remains intact and is growing stronger.
2. Education Value of the Affiliation Remains Intact:
 - a. Enrollment Growth at University of Phoenix is strong.
 - b. Relationships with Idaho industry for workforce development continue to grow.
 - c. Idaho's need for place-based learning opportunities continues to grow.
3. Flexibility to Continue Discussions Regarding a Legislative Solution
 - a. Legislation passed in the 2024 Legislative Session creates a legal framework that the parties can utilize, with additional input from legislators, which would enable them to close on the transaction.
 - b. The parties to the Agreement are committed to continue working collaboratively with Legislators, through the 2025 Legislative Session if needed, to arrive at transaction acceptable to all.
4. Provision for Subsequent Open Public Board Meeting.
 - a. The proposed amendment specifically contemplates that there must be a subsequent amendment to outline the specifics of any revised

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transaction structure that addresses the concerns of the Legislature and meets the needs of the parties. The subsequent amendment will not become effective until it has been considered by the Regents in an open public meeting and approved.

Simply put, the proposed amendment allows for continued conversations to find a path forward for the transaction using the means provided by the Legislature and to do so in a manner that meets the needs and concerns of the Legislature. No agreement will be final until it has been approved by the Regents at an open public meeting.

The University seeks the Regent's consideration of the Amendment and approval for its execution.

IMPACT

The Amendment No. 1 to the Asset Purchase Agreement (hereinafter "Amendment No. 1"), addresses four material elements of the transaction contemplated by the Asset Purchase Agreement (APA) and also makes revisions to operational elements of the APA for closing conditions, notifications, interim approvals during the period up to closing.

Material Elements to the Transaction. The four elements of the transaction are:

- An extension of the Outside Date for closing to June 10, 2025 (Section 2);
- Removal of the exclusivity terms under the APA such that Seller is free to seek other purchasers for the University of Phoenix, either through a private sale or through an Initial Public Offering (IPO), and to terminate the APA in favor of another sale or an IPO (Sections 3 and 5);
- Payment of sums by the Seller as follows:
 - Payment of \$5 million to Buyer promptly after execution of Amendment No. 1 as an Outside Date Extension Fee (Extension Fee) (Section 4);
 - Payment of \$10 million to Buyer (including the Extension Fee) in the event the parties are unable to close the anticipated transaction before the June 10, 2025 extended Outside Date (Section 6(b));
 - Payment of \$20 million to Buyer (including the Extension Fee) in the event Seller chooses to terminate the APA in favor of another sale or an IPO (Section 6(c)).
- Subsequent Amendment to be Considered by the Regents:
 - Recognition that during the extension of the Outside Date the parties will work in good faith to negotiate an additional amendment to the APA that reflects a structure and terms that address the requirements of applicable law and that eliminate the legal obstacles that impact the ability to complete the transaction, including marketing of bonds to finance the closing of the

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transaction. The terms of this additional amendment must be satisfactory to all parties and must be approved by their respective governing boards, including the Regents in an open public meeting. (Section 15)

Operational Revisions. There are revisions to the Asset Purchase Agreement made necessary by the extension of time and by the removal of exclusivity.

- Revisions to certain Closing Conditions made necessary by the extension of the Outside Date (Section 7);
 - Noting that the Representation and Warranty (R&W) Insurance Policy has been issued and must continue to be bound or extended as applicable; (Section 7.a & Section 12)
 - U.S. Department of Education (USDE) Pre-Closing Educational Notice and Consent has been obtained and must be updated as applicable; (Section 7(b))
 - USDE Pre-Acquisition Review has been obtained and must be updated as applicable; (Section 7(c))
 - IRS approval of Four Three Education, Inc.'s public charity status under Internal Revenue Code Section 501(c)(3) has been received and must remain in force and effect.; (Section 7(d))
- Revisions to certain operating covenants under the APA to recognize the removal of exclusivity and to streamline certain operating approval requirements under the APA;
 - Recognizing Sellers right to market to other buyers or pursue an IPO; (Section 8(a) and (b))
 - Streamlining approvals of ongoing operating decisions of University of Phoenix, Inc. made in the ordinary course of business prior to closing based on what the parties have learned in the prior 12 months of ongoing operational approvals; (Section 8(c) through (g))
- Revisions to certain required Approvals and Consents; (Section 9)
 - Recognizing the need to update filings with the Federal Government for anti-trust/competition review of the transaction; (Section 9(a))
 - Recognizing that Seller may be having independent discussions with governmental authorities as part of negotiating potential sales to other purchasers, with regular reporting requirements between counsel for the parties; (Section 9(b) & (c))
- Revisions to disclosure requirements to allow Seller to retain information and documents related to potential transactions with other purchasers or a potential IPO; (Section 10)
- Revisions to confidentiality requirements to allow Seller to disclose relevant information to other parties with regard to potential transactions with other purchasers or a potential IPO; (Section 11)

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- Recognition of the Seller’s continued efforts to acquire assets related to the operation of Talent Mobility. This includes a proposed merger of Talent Mobility with EmPath, the current owner of the AI platform utilized by Talent Mobility. The Buyer retains the option to determine whether to include this business operation in the closing; (Section 13)
- Continuing promises by the parties to use commercially reasonable efforts to bring the transaction to a closing, in line with the amended terms of the APA; (Section 14)

ATTACHMENTS

Attachment 1 – Proposed Amendment No. 1 to the Asset Purchase Agreement

BOARD STAFF COMMENTS AND RECOMMENDATIONS

The University of Idaho has worked with the Sellers to negotiate a closing date extension to June 10, 2025. This will provide the University time to work with policymakers to develop and create a legal entity that could acquire the University of Phoenix consistent with the framework established by the legislature in H708 (now codified in Idaho Code § 30-501). Sellers would pay the University a \$5 million extension fee, and in exchange, the University would agree to drop the exclusivity terms, thereby allowing Sellers to market their asset to other interested parties.

BOARD ACTION

I move to approve the proposed Amendment No. 1 to the Asset Purchase Agreement in substantial conformance to Attachment 1 and to authorize the president of the University of Idaho, or the president’s designee to execute the amendment and to execute and deliver all such other documents, instruments, certificates, filings and other agreements, and to do and perform all such other acts as may be required to effectuate the intent and purposes of the Asset Purchase Agreement as amended thereby.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

AMENDMENT NO. 1 TO THE ASSET PURCHASE AGREEMENT

This AMENDMENT NO. 1 (this “Amendment”), dated as of June 28, 2024, to the Asset Purchase Agreement (the “Asset Purchase Agreement”), dated as of May 31, 2023, by and among (a) Four Three Education, Inc. (f/k/a NewU, Inc.), an Idaho non-profit corporation (“Buyer”), (b) The University of Phoenix, Inc., an Arizona corporation (“Seller”), (c) Apollo Education Group, Inc., an Arizona corporation (“AEG”), solely for purpose of Section 2.09 (*Non-Assignable Assets*), ARTICLE V (*Representations and Warranties of AEG*), Section 8.08 (*Confidentiality*), Section 8.09 (*Non-Disparagement; Non-Competition; Non-Solicitation*), Section 8.25 (*Pre-Closing Reorganization*), Section 8.26 (*Certain Other Investments*), Section 8.29 (*Further Assurances*) and ARTICLE XII (*Miscellaneous*) therein and (d) The Regents of the University of Idaho (“UoI”), solely for the purposes of ARTICLE VII (*Representations and Warranties of UoI*), Section 8.10(d) (*Approvals and Consents*), Section 8.29 (*Further Assurances*), and ARTICLE XII (*Miscellaneous*) therein, is made and entered into by and among Buyer, Seller, AEG and UoI. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement.

WHEREAS, Buyer, Seller, AEG and UoI entered into the Asset Purchase Agreement on May 31, 2023;

WHEREAS, Section 12.09 of the Asset Purchase Agreement provides that the parties thereto may modify, supplement or amend the Asset Purchase Agreement, by a written agreement signed by each party thereto; and

WHEREAS, the parties to the Asset Purchase Agreement wish to amend certain terms of the Asset Purchase Agreement as set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. ARTICLE I (*Definitions*) of the Asset Purchase Agreement is hereby amended to add, or in the case of existing definitions, to amend and restate in their entirety, the following definitions (with such changes to Article I shown in blackline form, with **bold** text representing additions and ~~struck through~~ text representing deletions):

“Acceptable Confidentiality Agreement” means an agreement with Seller and/or AEG that contains customary provisions that require any counterparty thereto (and any of its Affiliates and representatives named therein) that receive material non-public information of or with respect to Seller to keep such information confidential; *provided, however, that, in each case, the provisions contained therein are not materially less favorable in the aggregate to Seller and/or AEG (as applicable) than the terms of the Confidentiality Agreement (it being understood that such agreement need not contain any “standstill” or similar provisions or otherwise prohibit the making of any Acquisition Proposal).*

“Alternate Sale” has the meaning set forth in Section 8.04.

“Alternative Transaction” has the meaning set forth in Section 8.04.

“Alternative Transaction Termination Fee” has the meaning set forth in **Section 11.02(c)**.

“First Amendment” means the Amendment No. 1, dated as of June 28, 2024, to this Agreement, by and among Buyer, Seller, AEG and UoI.

“IPO” means any of (a) an underwritten initial public offering by any of Seller or any other IPO Issuer or (b) a direct listing on a National Securities Exchange or similar process by Seller or any other IPO Issuer, and in each case of subclauses (a) or (b) above, pursuant to which one more classes of shares or other equity securities of such IPO Issuer are, or following the consummation of the applicable transaction, will be, listed on an exchange registered with the SEC under Section 6(a) of the Securities Exchange Act of 1934, as amended (or any successor to such section).

“IPO Issuer” means any of (a) Seller, (b) AEG or (c) any Subsidiary or successor to Seller, AEG or its direct parent entity that, directly or indirectly, holds all or substantially all of the operating assets of the University.

“EmPath” means EmPath, Inc.

“ETM Exclusion Notice” has the meaning set forth in **Section 8.26(b)**.

“ETM Interests” means the equity interests in Talent Mobility, LLC owned by AEG, whether prior to, or following, any acquisition of the outstanding equity interests in, or merger with, EmPath.

“Extension Fee” has the meaning set forth in **Section 11.03**.

“Outside Date Termination Fee” has the meaning set forth in **Section 11.02(b)**.

“Purchase Price” means the net amount equal to the sum of (a) the Base Purchase Price (b) *decreased* by the amount of Seller Expenses, ~~and~~ (c) either: (i) *increased* by the amount, if any, by which the Closing Working Capital is greater than the Target Working Capital, or (ii) *decreased* by the amount, if any, by which the Closing Working Capital is less than the Target Working Capital; and (d) *increased* by an amount equal to the Extension Fee.

“SEC” means the United States Securities and Exchange Commission and any other Governmental Authority at the time administering the Securities Act.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Talent Mobility” means Talent Mobility, LLC.

“Transferred Confidential Information” means all (a) information, written or oral, that is confidential or proprietary, or is not otherwise generally available to the public, including all Intellectual Property Assets, constituting or related to the Purchased Assets or the business of operating the University as currently conducted and as contemplated to be conducted and (b)

“Confidential Information” under the Confidentiality Agreement, **excluding, in each case, for the avoidance of doubt, this Agreement and any amendment hereto and the Ancillary Documents (other than information contained in the Disclosure Schedules, which shall constitute Transferred Confidential Information).**

2. Outside Date. Section 11.01(b)(iii) of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions and ~~struck-through~~ text representing deletions):

“(iii) any of the conditions set forth in Section 9.01 or Section 9.02 shall not have been, or if it becomes apparent that any of such conditions shall not be, fulfilled by ~~May 31, 2024~~ **June 10, 2025** (the “Outside Date”), unless such failure shall be due solely 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 prior to the Closing.”

3. No Solicitation of Other Bids; Alternative Transactions. Section 8.04 of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions and ~~struck-through~~ text representing deletions):

“Section 8.04 ~~No Solicitation of Other Bids~~ Alternative Transactions. **(a) Notwithstanding anything to the contrary in this Agreement, Seller and its Affiliates and their respective Representatives shall not, and shall not authorize or have the right to, in Seller’s sole discretion and without any consent from Buyer, permit any of its Affiliates or any of its or their Representatives to,** directly or indirectly, **(x)(i) solicit, initiate, or knowingly encourage, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into, engage in, participate in or maintain discussions or negotiations with, or provide any information to, any Person that, to Seller’s Knowledge, is considering making, an Acquisition Proposal, or otherwise cooperate in connection with or assist or participate in or facilitate any such discussions or negotiations or any effort or attempt to make any Acquisition Proposal;** or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal; **including entry into a definitive, binding agreement in respect of an Acquisition Proposal (an “Alternate Sale”, and together with an IPO, an “Alternative Transaction”)** or (y) pursue, take steps towards, including publicly or privately filing a registration statement for the sale under the Securities Act of equity securities of an IPO Issuer, or consummate an IPO; and in the case of either clauses (x) or (y) of this Section 8.04(a), terminate this Agreement in connection therewith; **provided that, in the case of such termination of this Agreement, the Seller shall pay to Buyer the Alternative Transaction Termination Fee if such fee is due and payable in accordance with Section 11.02(c) (Effect of Termination) of this Agreement.** ~~Promptly after the execution of this Agreement, Seller shall~~

~~cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to 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 (whether written or oral) from any Person (other than Buyer or any of its Affiliates) contemplating or otherwise relating to the direct or indirect disposition, whether by sale, merger, amalgamation, share exchange, business combination, issuance of securities, acquisition of securities, reorganization, recapitalization, tender offer, exchange offer, asset sale, license, lease or otherwise, of all or any portion of the University or the Purchased Assets, **including the acquisition of an IPO Issuer by a special purpose acquisition company.**

~~(b) — In addition to the other obligations under this Section 8.04, Seller shall promptly (and in any event within two (2) Business Days after receipt thereof by Seller or its Representatives) advise Buyer in writing of any Acquisition Proposal or any written request for information with respect to any Acquisition Proposal.~~

~~(c) — Seller will promptly request from each Person that has executed a confidentiality agreement in connection with its consideration of making an Acquisition Proposal to return or destroy (as provided in the terms of such confidentiality agreement) all confidential information concerning the University or Purchased Assets and promptly terminate all physical and electronic data access previously granted to such Person.~~

~~(d) — Seller agrees that the rights and remedies for noncompliance with this Section 8.04 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.”~~

4. Outside Date Extension Fee. The following is hereby added to the Asset Purchase Agreement as new Section 11.03:

“Section 11.03 Outside Date Extension Fee. Within two Business Days of the date of the First Amendment, Seller shall pay, or shall cause to be paid, to Buyer or its designee, by wire transfer of immediately available funds to one or more accounts designated in writing by Buyer, an amount equal to \$5,000,000 (the “Extension Fee”).”

5. Termination.

(a) Section 11.01(b)(i) of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions and ~~struck through~~ text representing deletions):

~~“(i) at any time after the date which is 90 calendar days after the date of this Agreement, if Buyer has failed to obtain a R&W Insurance Policy as contemplated by Section 8.11 on or prior to such date;~~

(i) [Reserved.]”

11.01(c)(iv): (b) Section 11.01(c) is hereby amended to add the following as new Section

“(iv) Seller has elected to (x) enter into a definitive agreement with respect to an Alternate Sale or (y) publicly file with the SEC a registration statement under the Securities Act for the sale of securities in connection with an IPO.”

6. Effect of Termination. Section 11.02 of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions and ~~struck through~~ text representing deletions):

“(a) In the event of termination of this Agreement in accordance with this ARTICLE XI, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto (or any of its Affiliates or Representatives) except as set forth in this ARTICLE XI (Termination), Section 8.08 (Confidentiality) and ARTICLE XII (Miscellaneous) hereof, and subject to the express terms and limitations set forth in this Agreement, no such termination shall relieve any party hereto from liability for any willful breach of any provision hereof, in which case the non-breaching party shall be entitled to all rights and remedies available at Law or in equity.

(b) If, on the Outside Date, the Closing shall not have occurred and either (i) Buyer terminates this Agreement in accordance with Section 11.01(b)(iii) or (ii) Seller terminates this Agreement in accordance with Section 11.01(c)(ii), then, no later than five (5) Business Days following such termination, Seller shall pay or cause to be paid to Buyer or its designee, by wire transfer of immediately available funds to one or more accounts designated in writing by Buyer, a termination fee equal to \$10,000,000 less an amount equal to the Extension Fee (the “Outside Date Termination Fee”). Such Outside Date Termination Fee shall be payable in accordance with this Section 11.02(b) regardless of the then-status of any alternate Alternative Transaction, if at all.

(c) If, at any time prior to or on the Outside Date, Seller terminates this Agreement in accordance with Section 11.01(c)(iv) then,

no later than five (5) Business Days following such termination, Seller shall pay or cause to be paid to Buyer or its designee, by wire transfer of immediately available funds to one or more accounts designated in writing by Buyer, a termination fee equal to \$20,000,000, less an amount equal to the Extension Fee (the “Alternative Transaction Termination Fee”). For the avoidance of doubt, the Alternative Transaction Termination Fee shall be payable in accordance with this Section 11.02(c) regardless of whether the applicable Alternative Transaction is ultimately consummated.

(d) Notwithstanding anything herein to the contrary, in no event shall the Seller be required to pay, or cause to be paid, both the Outside Date Termination Fee and the Alternative Transaction Termination Fee, nor shall the Seller be required to pay either the Outside Date Termination Fee or the Alternative Transaction Termination Fee on more than one occasion.”

7. Conditions to Closing.

(a) Section 9.02(f) of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions and ~~struck through~~ text representing deletions):

“(f) The R&W Insurance Policy shall ~~have been~~ **continue to be bound or shall have been extended, if applicable**, in accordance with Section 8.11(a), and the policy contemplated thereunder shall **continue to be issued** effective at its issuance upon the Closing.”

(b) Section 9.02(g) of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions and ~~struck through~~ text representing deletions):

“(g) Each Pre-Closing Educational Notice and Consent identified on Section 4.15(z) **of the Disclosure Schedule**, including the ED Abbreviated Pre-Acquisition Review Notice, shall have been **updated and shall have been** obtained or effectuated, as applicable, and no Educational Agency shall have notified Seller, the University, or Buyer, that it will not approve the transactions contemplated by this Agreement. Copies of each Pre-Closing Educational Notice and Consent shall have been delivered to Buyer no later than five Business Days prior to the Closing Date.”

(c) Section 9.02(k) of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions):

“(k) The ED Abbreviated Pre-Acquisition Review Notice (**as updated**) shall indicate that ED has reviewed the **updated** ED Abbreviated Pre-Acquisition Review Application and has determined not to impose or

otherwise require any of the University, Buyer, or UoI to post one or more Title IV Letters of Credit in favor of ED in excess of 25% of the University's Title IV Program funding during the University's most recently completed fiscal year as part of a materially complete change in ownership and control application after the Closing Date."

(d) Section 9.02(s) of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, **bold** text representing additions and ~~struck through~~ text representing deletions):

"(s) ~~Buyer shall have received a~~ **The** Section 501(c)(3) Determination Letter **received by Buyer shall be in full force and effect.**"

8. Conduct of University Prior to the Closing.

(a) Section 8.01(a) of the Asset Purchase Agreement are hereby amended and restated in their entirety (with the changes shown in blackline form, with **bold** text representing additions and ~~struck through~~ text representing deletions):

"(a) From the date hereof until the Closing, except (i) as otherwise provided in this Agreement (**including, as contemplated by Section 8.04 (Alternative Transactions), in connection with the pursuit of an Alternate Sale or an initial public offering**), (ii) as consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), (iii) as set forth in Section 8.01 of the Disclosure Schedules, (iv) as required by any Material Contract that has been disclosed to Buyer in the Disclosure Schedules, or (v) as required by applicable Law, Educational Law, Governmental Authorities or Educational Agencies, Seller shall use its reasonable best efforts to: (x) conduct the operations of the University in the ordinary course of business consistent with past practice; and (y) maintain and preserve intact its current business organization, operations and franchise and to preserve the rights, franchises, goodwill and relationships of its employees, students, suppliers, creditors, lessors, regulators and others having relationships with the University."

(b) Sections 8.01(b) of the Asset Purchase Agreement are hereby amended and restated in their entirety (with the changes shown in blackline form, with **bold** text representing additions and ~~struck through~~ text representing deletions):

"(b) Without limiting the foregoing, from the date hereof until the Closing Date, except (i) as otherwise provided in this Agreement (**including, as contemplated by Section 8.04 (Alternative Transactions), in connection with the pursuit of an Alternate Sale or an initial public offering**), (ii) as consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), (iii) as set forth in Section 8.01 of the Disclosure Schedules, (iv) as required by any Material Contract that has been disclosed to Buyer in the Disclosure Schedules, or

(v) as required by applicable Law, Educational Law, Governmental Authorities or Educational Agencies, neither Seller nor any Related Contracting Party shall, between the date of this Agreement and the Closing Date, directly or indirectly, do, or propose to do any of the following:”

(c) Section 8.01(b)(i) of the Asset Purchase Agreement is hereby amended and restated in its entirety (with the changes shown in blackline form, with **bold** text representing additions and ~~struck through~~ text representing deletions):

“(A) enter into any Material Contract **constituting a Material Contract (1) pursuant to Sections 4.08(a)(iii), (ix), (xi), (xiii) and (xiv) or (2) pursuant to Sections 4.08(i), (ii), (iv) and (ix) (but, with respect to clause (A)(2), references to \$1,000,000 in Section 4.08 shall be replaced by \$10,000,000 for the purposes of this Section 8.01(b))** (or any Contract which, if entered into prior to the date hereof, would have been **such** a Material Contract); (B) **enter into** any other agreement or arrangement that would adversely impact Seller’s ability to perform under this Agreement or any of the Ancillary Documents; or (C) accelerate, extend (other than ~~an extension or~~ **renewal** of such Contract on substantially similar terms to the University), amend or prematurely terminate, or waive any material right or remedy under, a Material Contract (or any Contract which, if entered into prior to the date hereof, would have been a Material Contract) or any other Contract that is an Assigned Contract, **other than in the ordinary course of business;**”

(d) Section 8.01(b)(ix) of the Asset Purchase Agreement is hereby amended and restated in its entirety (with the changes shown in blackline form, with **bold** text representing additions and ~~struck through~~ text representing deletions):

“(ix) other than in the ordinary course of business consistent with past practice, (A) grant any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation in respect of any current or former employees, officers, directors, independent contractors or consultants of the University, other than as provided for in any written agreements, as required by applicable Law or Educational Law, (B) change in the other material terms of employment for any employee of the University or any termination of any employee with a base salary in excess of \$250,000, or (C) accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, consultant or independent contractor of the University; **provided, however, that the foregoing clauses (A) through (C) shall not apply to any equity or equity-based compensation or retention, transaction or similar bonuses entered into in connection with the transactions contemplated by this Agreement, and which (1) constitute Seller Expenses or (2) do not otherwise create any Liability of the University or Buyer at or after the Closing;**”

(e) Section 8.01(b)(xi) of the Asset Purchase Agreement is hereby amended and restated in its entirety (with the changes shown in blackline form, with **bold** text representing additions and ~~struck through~~ text representing deletions):

“(xi) other than in the ordinary course of business consistent with past Practice **or as otherwise expressly permitted by this Section 8.01(b)**, adopt, modify or terminate any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant of the University; or (ii) Benefit Plan, in each case whether written or oral;”

(f) Section 8.01(b)(xiv) of the Asset Purchase Agreement is hereby amended and restated in its entirety (with the changes shown in blackline form, with **bold** text representing additions and ~~struck through~~ text representing deletions):

“(xiv) change any method of accounting or accounting practices relating to the University or any Purchased Asset, in each case except **(i)** as required by Law **or (ii) changes that do not materially affect the financial statements of Seller or modify Annex 1 to this Agreement;**”

(g) Section 8.01(b)(xv) of the Asset Purchase Agreement is hereby amended and restated in its entirety (with the changes shown in blackline form, with **bold** text representing additions and ~~struck through~~ text representing deletions):

“(xv) fail to maintain in full force and effect all material Permits necessary for the conduct **of the University as currently conducted.**”

9. Approvals and Consents.

(a) Section 8.10(c) of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions):

“(c) Without limiting the generality of the parties’ undertakings pursuant to subsections (a) and (b) above, **(x) Buyer agrees to (and Seller shall be responsible for 100% of all filing fees to) (A) make an appropriate filing of an updated Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated by this Agreement, as promptly as practicable and in any event no later than one hundred and eighty (180) days following the date of the First Amendment (or by such other date mutually agreed to by Buyer and Seller), (B) supply as promptly as reasonably practicable any additional information and documentary material that may be formally or informally requested in connection with the foregoing and (C) use reasonable best efforts to cause the expiration or termination of any applicable waiting periods under the HSR Act as soon as practicable and (y) each of the parties hereto shall use reasonable best efforts to, and cause their respective Affiliates to (i) prepare and file with**

the applicable Governmental Authority or Educational Agency promptly and fully all documentation to effect all necessary, proper and advisable the Filings and all other filings, notices, petitions, statements, registrations, declarations, submissions of information, applications, reports and other documents related thereto; (ii) respond to any inquiries by any Governmental Authority or Educational Agency regarding antitrust or other matters with respect to the Filings, the transactions contemplated by this Agreement or any Ancillary Document; and (iii) avoid the imposition of any Governmental Order or the taking of any action or the making of any decision or determination by a Governmental Authority or an Educational Agency that would delay, restrain, prevent, prohibit, alter or enjoin the transactions contemplated by this Agreement or any Ancillary Document. Nothing in this Agreement, including this Section 8.10(c), shall require or be construed to require (A) Buyer, UoI or their respective Affiliates to proffer to, or agree to, incur any Liabilities or any sale, divestiture, license, disposition or holding separate of, or any termination, prohibition, limitation, restriction or other action with respect to existing relationships, contracts, assets, product lines or businesses or interests therein of Buyer, the University or any of their respective controlled Affiliates, or (B) UoI to commit to, agree to or effect the sale, lease, license, disposal or holding separate of, or any structural or conduct remedy with respect to, the assets, rights, businesses or operations other than the assets, rights, business or operations of Buyer or the University in connection with the avoidance or elimination of any Governmental Order.”

(b) Section 8.10(f) of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions):

“(f) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or Educational Agency or the staff or regulators of any Governmental Authority or Educational Agency, **to the extent** in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Buyer or Seller with Governmental Authorities or Educational Agencies **(x)** in the ordinary course of business, **relating to an Alternative Transaction or otherwise unrelated with the transactions contemplated by this Agreement, (y)** any disclosure which is not permitted by Law or Educational Law, or **(z)** any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties shall 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. Without limiting the generality of the foregoing, and in furtherance of the foregoing, (i) none of the parties

hereto will, and shall cause their respective Affiliates and Representatives not to, initiate any non-routine discussions or other communications, whether oral or written, with any Educational Agency with respect to any Educational Approvals relating to the change of control contemplated by this Agreement **(but excluding, for the avoidance of doubt, any change of control resulting from an Alternative Transaction)** without notifying the other parties and coordinating any such contacts with such Educational Agency in respect of such matter, (ii) prior to the Closing, to the extent any documentation is prepared by Seller or its counsel related to such Educational Notices and Consents, Seller will provide copies of all documentation to Buyer for its review and prior approval, not to be unreasonably withheld, prior to submitting such documentation to the appropriate Persons, and shall incorporate the reasonable comments of Buyer and its counsel, and (iii) prior to the Closing, to the extent any documentation is prepared by Buyer or its counsel related to such Educational Notice and Consents, Buyer will provide copies of all documentation to Seller for its review and prior approval, not to be unreasonably withheld, prior to submitting such documentation to the appropriate Persons and shall incorporate the reasonable comments of Seller and its counsel. Buyer and Seller will each cause their Affiliates and their respective Representatives to promptly and regularly advise each other concerning the occurrence and status of any discussions or other communications, whether oral or written, with any Governmental Authority or Educational Agency with respect to any Educational Notices and Consent or Educational Approval **to the extent such discussions or communications relate to the transactions contemplated by this Agreement (and not relating to any Alternative Transaction)**, including any difficulties or delays experienced in obtaining such Educational Notice and Consent. **Without limiting the foregoing, from and after the date of the First Amendment, (x) designated legal Representatives of Buyer and Seller (which may include inside and outside counsel) shall meet on or about a monthly basis (or such other frequency agreed by Buyer and Seller) to review and discuss any meetings, discussions, filings, submissions of information or similar interactions or communications between Seller, on the one hand, and Governmental Authorities and Educational Agencies, on the other hand, that have occurred (or are expected to occur) in the ordinary course of business or that are otherwise not related to any Alternative Transaction or the transactions contemplated by this Agreement, (y) Seller shall cause its General Counsel to afford the General Counsel of Buyer or UoI reasonable access from time to time, upon reasonable advance notice, at mutually agreed times (and, if applicable, locations) for consultation regarding education regulatory matters relating to the University; provided, that such access and consultation shall not cause interruption of the Seller's or the University's normal operations, and (z) Seller shall, at the reasonable request of Buyer, provide Buyer (to the fullest**

extent permitted by applicable Law and, for the avoidance of doubt, subject to Section 8.08(a) with any filings, documentation written materials or communications submitted to, or exchanged with, regulators that are in the ordinary course of business or otherwise unrelated to an Alternative Transaction or the transactions contemplated by this Agreement.”

(c) Section 8.10(g) of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions):

“(g) Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or Educational Agency or the staff or regulators of any Governmental Authority or Educational Agency **to the extent such meeting, discussion, appearance or contact is concerning this Agreement or the transactions contemplated hereby (and excluding, for the avoidance of doubt, any meeting, discussion, appearance or contact that relates to an Alternative Transaction or other matters unrelated to the transactions contemplated by this Agreement, including the University’s PPA)**. Neither Buyer nor Seller shall agree to participate in any substantive meeting or discussion with any Governmental Authority or Educational Agency in respect of any filing, investigation or inquiry concerning this Agreement or the transactions contemplated hereby unless such party gives the other party the opportunity to attend and participate in such meeting or discussion.”

10. Access to Information. The last sentence of Section 8.03 of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions):

“Notwithstanding anything to the contrary in this Agreement, the University shall not be required to, and Seller may cause the University not to, disclose any information to Buyer or its Representatives or Bond Counsel, if doing so could (i) violate any obligation of the University to any third party or Governmental Authority with respect to confidentiality or data protection, or (ii) result in the waiver of any legal privilege or work product protection of the University, Seller or their respective Affiliates, and in no event shall Seller and its Affiliates be required to disclose to Buyer or its authorized Representatives or Bond Counsel, **(A) any information related to the sale of the University, including any valuations of Seller or the University and materials related to the negotiation of this Agreement or the Ancillary Documents, or (B) any information regarding, or documentation relating to, any Alternative Transaction (including an Acquisition Proposal)**.”

11. Confidentiality. Section 8.08 of the Asset Purchase Agreement is hereby amended to add the following as subsection (c) (with the changes shown in blackline form, with **bold** text representing additions):

“(c) **Notwithstanding anything to the contrary in this Agreement, including Section 8.08(b), in furtherance of Section 8.04 (Alternative Transactions), the Seller and its Affiliates, and its and their Representatives shall be permitted to disclose and furnish information regarding the Seller, its Affiliates, the University and its assets and operations, including the Purchased Assets and Transferred Confidential Information (and, for the avoidance of doubt, this Agreement and the First Amendment), to (A) any Persons contemplating or making an Acquisition Proposal, or their financing sources or Representatives, in each case, subject to the entry into, and in accordance with, an Acceptable Confidentiality Agreement,, and (B) underwriters, initial purchasers or other counterparties and their respective Representatives (in each case, subject to customary confidentiality arrangements with such Persons) in connection with an IPO; provided, that Seller shall not provide to any such Person any non-public information of or relating to Buyer or UoI except as required by Law (it being understood and agreed that, for the avoidance of doubt, no Transferred Confidential Information, this Agreement or any Ancillary Document constitute non-public information of Buyer or UoI).**”

12. R&W Insurance Policy. Section 8.11 of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions and ~~struck through~~ text representing deletions):

“(a) Following the execution of ~~the First Amendment~~**this Agreement**, Buyer shall use commercially reasonable efforts to cause to **continue to** be bound to a R&W Insurance Policy, **or obtain an extension of the R&W Insurance Policy to which it is currently bound, as applicable**, by no later than the date that is ninety (90) calendar days after the date of ~~the First Amendment~~**this Agreement** (or by such other date mutually agreed to by Buyer and Seller), which R&W Insurance Policy shall (i) be on terms reasonably acceptable to Buyer; provided, that, an insurance policy that does not include a blanket exclusion on intellectual property matters as a specific underwriting exclusion, or with such changes thereto as a reasonable buyer in Buyer’s position would find acceptable as a commercial matter, shall be deemed acceptable to Buyer, and (ii) provide that the underwriter and insurers under the R&W Insurance Policy will have no right of subrogation against Seller or any of its Affiliates nor any of their respective successors and permitted assigns, officers, employees, directors, managers, members, partners, stockholders or Representatives, other than in the case of Fraud.

(b) Seller will, and will cause its Representatives to, reasonably cooperate with Buyer or its Affiliates in connection with Buyer maintaining the R&W Insurance Policy, including by responding to reasonable and customary due diligence questions and providing information (and related updates to the Disclosure Schedules) in connection with the R&W Insurance Policy underwriting process (subject to Section 8.03 (Access to Information)). Buyer will take all actions reasonably necessary to cause the R&W Insurance Policy to **continue to be bound or obtain an extension of the R&W Insurance Policy to which it is currently bound, as applicable**, as promptly as practicable following the date **of the First Amendment**~~hereof~~, but in any event no later than the date set forth above, and to cause the R&W Insurance Policy to **continue to be**~~issued~~ effective at the Closing, including, **as applicable**, Buyer complying, or causing the compliance, with all reasonable requirements and deliverables under the R&W Insurance Policy and the delivery of a no claims declaration on behalf of the insured party. Notwithstanding the foregoing, Seller shall not be required to commit to take any action in connection with the R&W Insurance Policy that is not contingent upon the Closing (including the entry into any agreement).”

13. Certain Other Investments. Section 8.26 of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions and ~~struck-through~~ text representing deletions):

~~“On or prior to the sixtieth (60th) day following the date hereof, Buyer may elect, by written notice to Seller, that the ETM Interests be included as a Purchased Asset. If Buyer so elects, Buyer, Seller and AEG shall use their commercially reasonable efforts to structure the assignment and transfer of the ETM Interests to Buyer in a structure that is reasonably satisfactory to Buyer and Seller. From the date hereof until the sixtieth (60th) day following the date hereof, or, if Buyer elects for the ETM Interests to be a Purchased Asset, the Closing, neither AEG nor Seller shall, without Buyer’s prior written consent (provided, that Buyer has reasonably considered such agreements), enter into any license or intercompany services agreement between AEG or Seller on the one hand, or Talent Mobility, LLC or Empath Inc. on the other hand.~~

(a) **AEG shall use its reasonable best efforts to conduct the operations of Talent Mobility (including, following any acquisition of EmPath, EmPath) in the ordinary course of business and in compliance with applicable Laws. The provisions of Section 8.01(b) shall not apply to the operations or business of Talent Mobility or EmPath, but from time to time, upon reasonable prior notice, Buyer may request information from or consultation with the directors, officers, managers or employees of, or Seller employees involved with, Talent Mobility regarding the business; provided, that such access and consultation shall be reasonable and during normal business hours, and shall not**

cause undue interruption of AEG, Talent Mobility or the Seller's normal operations of their respective businesses.

(d) Seller and AEG acknowledge that Buyer has previously elected for the ETM Interests to be a Purchased Asset, but agree that notwithstanding such prior election, the inclusion of the ETM Interests as a Purchased Asset at the Closing shall be subject to Buyer's determination, in its sole discretion, that acquiring the ETM Interests will not adversely affect Buyer or the University at or after Closing. At any time prior to the date that is 30 days prior to the Closing Date, Buyer may provide written notice to Seller and AEG that it is electing to exclude the ETM Interests from Purchased Assets (the "ETM Exclusion Notice"). If Buyer has delivered an ETM Exclusion Notice, the ETM Interests shall not be transferred to Buyer at Closing, and Buyer, Seller and AEG shall (i) mutually agree upon any actions that may be required to be taken by a party hereto, Talent Mobility or EmPath in connection with the retention by AEG of the ETM Interests (including the entry into, or termination of, any agreements or arrangements at or following Closing between Talent Mobility or AEG and the University) and any services or licensing arrangements that may be rendered by Buyer or the University to AEG, Talent Mobility or EmPath following the Closing (whether such agreements or arrangements are temporary or transitional support services, or ongoing commercial contracts) and (ii) work in good faith to prepare and negotiate, as soon as reasonably practicable following such determination, any agreements with respect to those services or licensing required to be provided thereunder, which shall contain such terms and conditions be mutually agreed by Buyer and AEG."

14. Further Assurances; Efforts. Section 8.29 of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions and ~~struck-through~~ text representing deletions):

"Section 8.29 Further Assurances. Prior to the Closing, and without limiting ~~its~~ **their respective** obligations in **the** other provisions of this Agreement, **each of the parties hereto** ~~Seller~~ will, **and continue to**, use commercially reasonable efforts to carry out the provisions of this Agreement and other agreements among the parties, and to give effect to **and consummate** the transactions contemplated hereby and thereby **as promptly as practicable, and in any event, prior to the Outside Date, but in each case, taking into account the amendments to the Agreement as set forth in the First Amendment and the rights of the parties set forth therein**. Following the Closing, each of the parties hereto 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 Ancillary Documents.”

15. Subsequent Amendment. After the execution of this Amendment, the parties hereto shall work in good faith to negotiate a further amendment to the Asset Purchase Agreement that reflects a structure and terms (substantially consistent with the terms of the Asset Purchase Agreement) that meet the requirements of applicable Law or otherwise seek to eliminate legal obstacles that would impact the ability of Buyer to market and complete the Permanent Debt Financing or otherwise consummate transactions contemplated by the Asset Purchase Agreement (the “Subsequent Amendment”), which Subsequent Amendment shall include, among other things, (a) provisions consistent with Section 8.04, 8.10(f) and 8.10(g) of the Asset Purchase Agreement prior to the amendment of such section by this Amendment and (b) updates to the Seller Disclosure Schedules with respect to the Seller Fundamental Representations. The terms of the Subsequent Amendment must be satisfactory to each of the parties thereto and approved by their respective governing boards. Subject to the satisfactory negotiation of final terms of the Subsequent Amendment, UofI will use commercially reasonable efforts to hold a public board meeting of its governing board to approve the Subsequent Amendment and the transactions contemplated by this Agreement (as amended by this Amendment), as further amended by the Subsequent Amendment, as soon as reasonably practicable.

16. Interpretation; Construction. Section 12.03(d) of the Asset Purchase Agreement is hereby amended and restated in its entirety to read as follows (with the changes shown in blackline form, with **bold** text representing additions and ~~struck-through~~ text representing deletions):

“(d) the words “herein,” “hereof,” “hereby,” “hereto,” ~~and~~ “hereunder,” **and “this Agreement” shall, from and after the date of the First Amendment,** refer to ~~this Agreement as a whole~~ **the Asset Purchase Agreement, as amended by the First Amendment. Each reference herein to “the date of the First Amendment” shall refer to June 28, 2024, and each reference to the “date of this Agreement”, the “date hereof”, “concurrently with the execution and delivery of this Agreement” and similar references shall refer to May 31, 2023.**”

17. Representations and Warranties.

(A) Representations and Warranties of Seller. Seller and the University hereby represent and warrant to Buyer and UoI that the statements in this Section 19(A) are true and accurate as of the date of this Amendment:

(i) Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of Arizona 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 carry on the conduct of the operations of the University as currently conducted.

(ii) Seller has full corporate power and authority to execute and deliver this Amendment and to perform its obligations hereunder. The execution and delivery by Seller of this Amendment and the performance of its obligations hereunder have been duly and validly

authorized and no additional corporate or shareholder authorization or consent is required in connection with the execution and delivery by Seller of this Amendment or the performance of its obligations hereunder.

(iii) The execution and delivery by Seller of this Amendment and the performance by Seller of its obligations hereunder and the consummation by Seller of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Seller and the University.

(iv) This Amendment has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by the parties hereunder) this Amendment constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except to the extent that the enforceability thereof may be limited by the Equitable Exceptions.

(B) Representations and Warranties of AEG. AEG represents and warrants to Buyer and UoI that the statements in this Section 19(B) are true and accurate as of the date of this Amendment:

(i) AEG is a corporation duly organized, validly existing and in good standing under the Laws of the state of Arizona and has all requisite corporate power and authority to own its properties and carry on its business in all material respects as presently owned or conducted.

(ii) AEG has full corporate power and authority to execute and deliver this Amendment, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by AEG of this Amendment, the performance of its obligations hereunder and the consummation by AEG of the transactions contemplated hereby have been duly and validly authorized by all requisite corporate action on the part of AEG. No additional corporate or shareholder authorization or consent is required in connection with the execution and delivery by AEG of this Amendment or the performance of its obligations hereunder.

(iii) The execution and delivery by AEG of this Amendment and the performance of its obligations hereunder do not and will not violate any provision of the articles of incorporation, bylaws or other organizational documents of AEG.

(iv) This Amendment has been duly executed and delivered by AEG, and (assuming due authorization, execution and delivery by Buyer) this Agreement (to the extent applicable to AEG) constitutes a legal, valid and binding obligation of AEG enforceable against AEG in accordance with its terms, except to the extent that the enforceability thereof may be limited by the Equitable Exceptions.

(C) Representations and Warranties of Buyer. Buyer represents and warrants to Seller and AEG that the statements in this Section 19(C) are true and accurate as of the date of this Amendment:

(i) Buyer is a non-profit corporation duly organized, validly existing and in good standing under the Laws of the state of Idaho that is organized and operated to qualify as an organization exempt from federal income Taxes under Section 501(c)(3) of the Code. Buyer has all requisite corporate power and authority to own its properties and carry on its business in all material respects as presently owned or conducted. Buyer was formed solely for the purpose of engaging in the transactions contemplated by the Agreement, has no liabilities or obligations of any nature other than those incident to its formation or pursuant to the transactions contemplated by the Agreement and, prior to the Closing, will not have engaged in any other business activities other than those relating to transactions contemplated by the Agreement or those incident to its formation.

(ii) Buyer has full corporate power and authority to execute and deliver this Amendment and to perform its obligations hereunder. Each of the board of directors of Buyer and the Board of Regents of the University of Idaho has approved, authorized and adopted this Amendment, the execution and delivery by Buyer of this Amendment and the performance of its obligations hereunder. The execution and delivery by Buyer of this Amendment, the performance of its obligations hereunder and the consummation by Buyer of the transactions contemplated hereby have been duly authorized by all requisite corporate or similar action on the part of Buyer or any governing body thereof, and no additional corporate or shareholder authorization or consent is required in connection with the execution and delivery by Buyer of this Amendment or the performance of its obligations hereunder. This Amendment has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Amendment constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except to the extent that the enforceability thereof may be limited by the Equitable Exceptions.

(iii) The execution, delivery and performance by Buyer of this Amendment to which it is a party, the consummation of the transactions contemplated hereby, and the performance of its obligations hereunder do not and will not: (A) conflict with or result in a violation or breach of, or default under, any provision of the articles of incorporation, by-laws or other organizational documents of Buyer or (B) conflict with or result in a violation or breach of any provision of any Law or Governmental Order or Educational Agency requirement applicable to Buyer.

(D) Representations and Warranties of UoI. UoI represents and warrants to Seller and AEG that the statements in this Section 19(D) are true and accurate as of the date of this Amendment:

(i) UoI is a state institution of higher learning and body corporate that was established pursuant to Chapter 28, Title 33, Idaho Code, and Section 10, Article IX, of the Idaho Constitution and has all requisite corporate power and authority to own its properties and carry on its business in all material respects as presently owned or conducted.

(ii) UoI has full corporate power and authority to execute and deliver this Amendment and to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by UoI of this Amendment and the performance of its obligations hereunder have been duly and validly authorized and no additional corporate or

shareholder authorization or consent is required in connection with the execution and delivery by UoI of this Amendment or the performance of its obligations hereunder.

(iii) The execution and delivery by UoI of this Amendment and the performance of its obligations hereunder do not and will not violate any provision of the articles of incorporation, bylaws or other organizational documents of UoI.

(iv) This Amendment has been duly executed and delivered by UoI, and (assuming due authorization, execution and delivery by Seller) this Amendment (to the extent applicable to UoI) constitutes a legal, valid and binding obligation of UoI enforceable against UoI in accordance with its terms, except to the extent that the enforceability thereof may be limited by the Equitable Exceptions.

18. Confirmation of Asset Purchase Agreement. Other than as expressly modified pursuant to this Amendment, all of the terms, covenants and other provisions of the Asset Purchase Agreement are hereby ratified and confirmed and shall continue to be in full force and effect in accordance with their respective terms.

19. Counterparts. This Amendment may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute one and the same agreement.

20. Miscellaneous. The provisions of Article XII of the Asset Purchase Agreement shall apply *mutatis mutandis* to this Amendment, and to the Asset Purchase Agreement as modified by this Amendment, taken together as a single agreement, reflecting the terms therein as modified by this Amendment.

[Signature pages follow]

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

BUYER

FOUR THREE EDUCATION, INC. (f/k/a NEWU, INC.)

By _____
Name:
Title:

SELLER

THE UNIVERSITY OF PHOENIX, INC.

By _____
Name:
Title:

AEG

APOLLO EDUCATION GROUP, INC.

By _____
Name:
Title:

UOI

THE REGENTS OF THE UNIVERSITY OF
IDAHO.

By _____
Name:
Title: