



## MASTER SERVICES AGREEMENT



This MASTER SERVICES AGREEMENT (together with the exhibits and any future amendments hereto, this "Agreement") is entered into as of this 15<sup>th</sup> day of June 2018 (the "Effective Date") by and between EXETER EDUCATION LLC, a Delaware limited liability company ("Provider"), and University of North Dakota ("Client") (each, a "Party" and, collectively, the "Parties").

WHEREAS, Provider has developed accelerated and immersive courses to prepare students for careers in the field of software engineering;

WHEREAS, Client operates school(s) at facilities located in North Dakota (the "Campus");

WHEREAS, Client desires to engage Provider to provide to Client certain services as are (i) set forth in this Agreement, (ii) set forth in one or more Services Addenda to this Agreement, or (iii) mutually agreed by the Parties in writing; and

WHEREAS, Provider desires to provide such Services to Client.

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

### 1. Certain Definitions.

1.1 "Access" refers to the ability of authorized agents, officers, directors and employees of Provider to (i) enter and exit the Campus as reasonably necessary to perform the Services under this Agreement, (ii) review and analyze relevant documents, books and records of Client (including copies) as reasonably necessary for the performance of the Services, and (iii) consult with any employees of Client as reasonably necessary to perform the Services under this Agreement.

1.2 "Accrediting Body" means any governmental or non-governmental entity that engages in the granting or withholding of accreditation of secondary or postsecondary educational institutions or programs in accordance with standards relating to the performance, operations, financial condition or academic standards of such institutions.

1.3 "Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. For the foregoing

purposes, "control" means the ownership of more than 50% of the securities entitled to elect the board of directors or other managing or governing body of such person.

1.4 "Applicable Law" means any laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity or Educational Agency applicable to a Party.

1.5 "Business Days" means each day (i) on which banks are open for business in Phoenix, Arizona, and (ii) for purposes of calculating any time periods set forth in Exhibit A, designated as a working day by Client for its employees.

1.6 "Client Gross Revenue from Courses" means revenue received by Client or its Affiliates in respect of (a) tuition and fees from Courses offered by Provider through Client online and on the Campus (including at facilities Client leases), and (b) educational resources that Client provides to its students, such as access to online materials, in respect of the Courses offered by Provider.

1.7 "Courses" means those Courses provided to Client as listed and described on Exhibit A or in any Services Addenda.

1.8 "Course Materials" means, collectively, syllabi and resource material and content for the Courses, including concepts, materials, resources and text requirements, self-study materials, case studies, curricula and such other items or materials, in all forms and media, relating to the Courses or as is otherwise used by Provider and/or its Affiliates in connection with the offering and delivery of the Courses, in each case as otherwise owned, created or developed by Provider.

1.9 "Educational Activities" means Client's activities in connection with the educational programs offered by Client at the School.

1.10 "Educational Agency" means any entity or organization, whether governmental, government chartered, tribal, private, or quasi-private, that engages in granting or withholding Educational Approvals for secondary or postsecondary educational institution in accordance with standards relating to the performance, operation, financial condition, or academic standards of such institutions, including any Accrediting Body.

1.11 "Educational Approval" means, with respect to Client, any license, permit, authorization, certification, accreditation, or similar approval, issued or required to be issued by an Educational Agency to Client.

1.12 "Educational Law" means any federal, state, municipal, foreign or other law, regulation, order, Accrediting Body standard or other requirement applicable thereto, including but not limited to the Family Educational Rights and Privacy Act (FERPA).

1.13 "Fiscal Year" means the fiscal year of Client.

1.14 "Governmental Entity" means any governmental authority or entity, including any agency, board, bureau, commission, court, department, subdivision or instrumentality thereof, or any arbitrator or arbitration panel, including any Educational Agency.

1.15 "Marks" means the Client Marks or Provider Marks, as applicable.

1.16 "School" means a secondary or postsecondary educational institution for general educational purposes.

1.17 "Services" means those services provided by Provider to Client (i) as listed and described on Exhibit A, or (ii) as set forth in one or more Services Addenda to this Agreement.

1.18 "Title IV Program" means any program of student financial assistance administered pursuant to Title IV of the Higher Education Act of 1965, as set forth at 34 C.F.R. § 668.1(c).

## 2. Services Provided to Client.

2.1 Services to be Provided. Provider shall, subject to the terms and conditions in this Agreement and any applicable Services Addenda, provide to Client the specific set of Services as are set forth on Exhibit A to this Agreement and in any Services Addenda. Additional Services (and the terms thereof) may be added pursuant to a separate Services Addendum mutually agreed upon by the Parties. Services may be terminated as provided in this Agreement or in the applicable Services Addendum.

2.2 Exclusivity. Except as otherwise provided herein, Provider will be the exclusive provider to Client of the Services. Client will not (a) perform the Services for itself, or (b) contract with any third party for the performance of any Services, in each case without the prior written consent of Provider to be granted in Provider's sole discretion. The foregoing exclusivity shall not apply to courses offered by Client primarily for children up to age 18. Provider shall not, while this Agreement is in force, provide the Services to any other client, institution, or organization having its principal place of business in North Dakota, South Dakota, Minnesota, Iowa, Nebraska, Montana, or Wyoming.

2.3 Location of Services; Subcontracting. Provider shall provide the Services from, and using Services Personnel located at, Provider's premises, provided that Provider may provide certain Services at the Campus as contemplated by this Agreement and as reasonably necessary or appropriate for Provider to provide the Services. Notwithstanding the foregoing, Provider may subcontract the performance of any one or more of the Services to third parties as determined by Provider, such third parties shall be subject to the approval of Client; provided that Provider shall remain responsible and liable for the performance, acts and omissions of all such third party subcontractors.

2.4 Services Addenda. To add Services in addition to those described in Exhibit A, or to delete or materially change Services set forth on Exhibit A, the Parties shall enter into one or more services addenda substantially in the form attached hereto as Exhibit B ("Services Addenda") which Services Addenda shall be numbered sequentially (e.g., Services Addendum B-1, Services Addendum B-2, etc.). Each Services Addendum will be effective only when signed by authorized representatives of the Parties, and once finalized and signed by the Parties, shall be incorporated by reference and deemed part of this Agreement. In the event of a conflict between the terms of any Services Addendum and the body of this Agreement, the terms and conditions of this Agreement shall control to the extent of the conflict (unless the Services Addendum specifically identifies and overrides the conflicting term(s), in which event, the terms of the Services Addendum shall control for such Services Addendum).

2.5 Services and Performance Standards. Pursuant to the terms and conditions of this Agreement, Provider will use all commercially reasonable efforts to provide to Client the Services in accordance herewith and any applicable performance standards set forth on Exhibit A and in the applicable Services Addendum. Provider shall perform the Services in a professional and workmanlike manner and in accordance with all Applicable Laws (subject to Section 2.7 (Compliance with Laws)). Client will use commercially reasonable efforts to perform its obligations under this Agreement. All Services shall be considered accepted upon delivery, unless otherwise set forth in the applicable Services Addendum.

2.6 Provision of Information. Client shall, during the Initial Term of this Agreement and any Renewal Term, make available to Provider on a timely basis all data, information and other materials within Client's reasonable control, and provide Access to Client's personnel, to the extent reasonably necessary for Provider to perform each of the Services. The Parties agree that Provider shall have no liability for any failure to perform, or for the late performance of, any Services to the extent such Services require data, information or other materials possessed, prepared or generated by Client, or Access to Client's personnel, to the extent that Client shall have failed to provide or make available the same or to cause the same to be provided or made available to Provider in accordance with Provider's reasonable written or oral (if promptly confirmed in writing) requests, and such failure by Client is the cause of Provider's lack of or delay in performance.

2.7 Compliance with Laws. The Parties agree that each Party shall perform its respective obligations hereunder in compliance with the Applicable Laws that apply to such Party's performance under this Agreement. For the avoidance of doubt, Provider shall not be responsible for Client's compliance with the Applicable Laws that apply to Client's Educational Activities (including the Educational Laws), even if the performance of the Services relate to such Applicable Laws, unless (a) Provider failed to provide specific Services expressly set forth herein or in a Services Addendum in accordance with the terms hereof or such Services Addendum, (b) such failure was the result of the gross negligence or willful misconduct of Provider (or Provider's Services Personnel or Services Personnel of contractors or subcontractors used by Provider), or (c) such failure causes Client's failure to comply with Applicable Laws. Neither Provider nor its Affiliates (nor third party service providers) shall be required to provide any Services to the extent that providing such Services would require Provider or its Affiliates to violate any Applicable Law.

2.8 Services Personnel. Provider shall determine the appropriate personnel who are employed by Provider (the "Services Personnel") to provide the Services. Provider will have full and complete authority to engage, dismiss, reprimand, or otherwise manage all Services Personnel. Client expressly understands and agrees that such actions by Provider with respect to the Services Personnel shall be in accordance with Provider's human resources policies in effect from time to time. Client shall have no authority pursuant to this Agreement with respect to any aspect of Provider's internal human resources, business or administrative policies.

2.9 Access. In connection with providing the Services hereunder, Client acknowledges and agrees that Provider shall have, and Client shall provide Provider with, during the Initial Term and any Renewal Term, reasonable and necessary Access to Client's personnel, documents, books and records and the Campus. Client shall take such steps as are reasonably necessary to permit such Access by Provider and the Services Personnel. While on the Campus, Provider shall require that the Services Personnel comply with all business, administrative, security and other policies of Client that otherwise would apply to Client personnel in roles providing such Services and that are provided by Client to Provider in writing.

2.10 Points of Contact; Disputes. Each of Provider and Client will name a point of contact for the Services that are the subject of this Agreement or any Services Addendum (each, a "Designee"). Designees shall be responsible for supervising and coordinating the performance of the Services, including using good faith efforts to resolve any disputes or issues that may arise during the performance of the Services hereunder on a day-to-day basis. Any dispute among the Parties relating to any Services or this Agreement shall be handled as provided in Section 16.11 (Dispute Resolution). The initial Designees as of the Effective Date are as follows:

For Provider: David Weems, COO

For Client: Lynette Krenelka, Director, UND

In addition, each Service Addendum may identify Designees for the Services described in such Service Addendum and such Designees will be the Designees for such Service Addendum.

Each Party may change a Designee by written notice to the other Party.

2.11 Responsibility for Affiliates. Each Party shall be responsible for its respective Affiliates' and third party service providers', contractors' and subcontractors' acts, omissions and performance under this Agreement and all such acts, omissions and performance shall be deemed to be the acts, omissions and performance by such Party.

2.12 Disclaimer of Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 5 (REPRESENTATIONS OF THE PARTIES) AND SECTION 2.5 (SERVICES AND PERFORMANCE STANDARD), OR AS SPECIFICALLY SET FORTH IN EXHIBIT A, PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES OR ANY ITEMS TO BE DELIVERED OR PROVIDED TO CLIENT OF ANY KIND, NATURE OR DESCRIPTION, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR ANY WARRANTY ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, AND PROVIDER HEREBY DISCLAIMS THE SAME.

### 3. Fees and Payments.

3.1 Provider shall provide to Client on or before the 15th day after the end of each calendar month a listing for such month of: (a) the students enrolled by Provider in any Course, (b) the tuition and fees charged, by type of charge, for each student enrolled in Course, (c) the tuition and fees collected, by type of charge, for each student enrolled in a Course, and (d) a calculation of the payments by Provider to Client pursuant to this Section 3 for such reporting period.

#### 3.2 Reports and Payment.

3.2.1 Provider shall provide to Client on or before the 15th day after the end of each calendar month a listing for such month of: (a) the students enrolled by Provider in any Course, (b) the tuition and fees charged, by type of charge, for each student enrolled in Course, (c) the tuition and fees collected, by type of charge, for each student enrolled in a Course, and (d) a calculation of the payments by Provider to Client pursuant to this Section 3 for such reporting period.

3.2.2 On a quarterly basis, Provider shall pay Client's portion of Client Gross Revenue from Courses for the subject reporting period, as reflected in the report provided under Section 3.2.1, by wire transfer of funds to such bank account as specified by Client in writing. If no wire transfer instructions have been provided, then payment will be made by check payable to Client.

3.3 Delinquent Payments. Services Fees due under this Agreement that are not paid as provided in Section 3.2.2 shall accrue simple interest at the prime rate as quoted in the Wall Street Journal plus one percent (1.0%) per annum or, if lower, the maximum rate permitted by Applicable Law, from the date due until paid in full. If Client does not pay such Services Fees within thirty (30) Business Days of the date due, Provider may suspend performance of all or a subset of the Services, may terminate this Agreement by written notice (including after any such suspension), and may seek any other remedies available to it, whether legal, contractual, equitable or otherwise. In the event that Provider disputes the Services Fees calculated by Client as provided above, the Parties will expeditiously work together in good faith to resolve such dispute.

3.4 Books and Records; Audit. Client shall maintain such books and records as are necessary to substantiate Services Fees payable in connection with this Agreement for the time specified in Client's

record retention schedule, a copy of which will be provided upon request. During the Initial Term of this Agreement and any Renewal Term and for a period of 180 days after the expiration or termination of this Agreement for any reason, Provider shall have the right to examine (or cause its external auditors to examine) such books and records that are specifically related to this Agreement and the calculation of the Services Fees. Such examinations shall be held upon reasonable advance notice to Client at Client's offices during normal business hours, and shall take place no more frequently than once each calendar year. Any such examination shall be made at Provider's sole cost and expense, provided that if an examination shows an underpayment of Services Fees of ten percent (10%) or more of the period being audited, then Client shall pay the reasonable cost of the examination within thirty (30) days after receipt of an invoice from Provider. If such examination discloses that any amounts have not been paid or have been made in incorrect amounts, and such amounts are not in dispute, the Parties shall promptly take appropriate steps to correct such errors in payment, including interest accruing at the rate for delinquent payments as set forth in Section 3.3 from the date such payment should have been made to the date on which such payment is made, and any reasonable costs of the audit. Provided, the foregoing obligation of Client to pay examination or audit costs shall be valid only to the extent permitted under North Dakota law, and subject to available appropriations.

#### **4. Term, Termination.**

4.1 Term. The term of this Agreement (the "Initial Term") shall commence on the Effective Date and, unless earlier terminated as provided in this Agreement, continue until the earlier of (a) the anniversary of the Effective Date identified on Exhibit A or such other date as is mutually agreed by the Parties in a written amendment to this Agreement signed by authorized representatives of each Party, or (b) with respect to any particular Service being provided hereunder, such other termination date as is mutually agreed by the Parties in writing or set forth in a Services Addenda related to any additional Service added hereto. On agreement of the parties as evidenced in a signed writing, this Agreement shall be renewable for successive one year terms (the "Renewal Terms").

#### **4.2 RESERVED.**

4.3 Termination of Agreement for Breach. This Agreement may be terminated by either Party upon written notice in the event that the other Party

materially breaches this Agreement and thereafter (a) in the case of material breach resulting from non-payment of amounts due hereunder, has failed to pay such amounts within ten (10) days after receiving written notice thereof; or (b) has failed to cure such material breach (or to commence diligent efforts to cure such breach that are reasonably acceptable to the terminating Party) within thirty (30) days after receiving written notice thereof.

4.4 Termination of Particular Service. The provision by Provider of any particular Service may be terminated by the non-defaulting Party upon written notice in the event that the other Party materially breaches this Agreement with respect to such particular Service and thereafter has failed to cure such material breach (or to commence diligent efforts to cure such breach that are reasonably acceptable to the terminating Party) within thirty (30) days after receiving written notice thereof.

4.5 Effect of Termination. Upon termination of this Agreement or any particular Service, as applicable, (a) Provider shall be entitled to all Services Fees and other amounts due for the provision of the relevant Services rendered up to and through the date of termination, as determined and payable in accordance with the terms in this Agreement and each Services Addendum, (b) the Parties shall take reasonable steps to provide the other Party with any information and records reasonably related to this Agreement or such Service requested by such other Party in writing to the extent appropriate and necessary to permit the continuing business operations of each of the Parties with a minimum of disruption, and (c) all licenses granted under Section 9 (Intellectual Property Rights) below will terminate; provided, however, if Client requests the performance of Transition Services (as defined in Section 4.6 below), such licenses will terminate at the end of the applicable Transition Period (as defined in Section 4.6 below).

4.6 Transition Services. Notwithstanding anything herein to the contrary, if this Agreement or any particular Service is terminated (regardless of the reason for such termination), then, at Client's option, Provider will continue providing the Services (or applicable Service) for a period of up to 90 days following the termination date (the post-termination services are referred to herein as the "Transition Services," and the 90 day period is referred to herein as the "Transition Period"). Notwithstanding the foregoing, if this Agreement or a Service is terminated as a result of Client's failure to timely pay the applicable Services Fees, then if Client desires to

receive Transition Services during the Transition Period, Client must, prior to the commencement of any Transition Services, (a) pay all outstanding Services Fees that are not subject to a good faith dispute, and (b) pay estimated Services Fees as reasonably determined by Provider for the Transition Period. If the actual Services Fees payable for the Transition Period are different than the estimated Services Fees paid by Provider, then (i) if the actual Services Fees exceed the estimated Services Fees, Client will pay the difference within thirty (30) days after the expiration of the Transition Period and (ii) if the actual Services Fees are less than the estimated Services Fees, Provider will refund to Client the difference within thirty (30) days after the expiration of the Transition Period. The Transition Services will be provided at least at the same levels of quality and timeliness of performance as such Services were required to be provided prior to the termination. In connection with a termination of the Agreement, Client may, upon written notice to Provider, modify the specific Transition Services to be provided to a subset of the Services provided under this Agreement and, in any case, may reduce the term for the Transition Period to a lesser period. Following any termination, the Parties agree to work in good faith to effectuate an orderly transition of the Services (or any particular Service), with a goal of minimum interruption to Client, its students and its Educational Activities. It is agreed and understood that the licenses granted to Provider in Section 9 (Intellectual Property Rights) shall remain in effect during the Transition Period, provided that Client complies with the terms in this Agreement, including timely paying the Services Fees for the Transition Services. If this Agreement expires following the giving by a Party of notice of non-renewal under Section 4.2 above, then during the period between the giving of such notice and the expiration of the Initial Term or Renewal Term, the Parties shall likewise work in good faith to wind down their relationship and effectuate an orderly transition of the Services, with a goal of minimum interruption to Client, its students and its Educational Activities.

#### **6. Certain Representations of the Parties.**

Each Party hereby represents, warrants and covenants that, during the Initial Term of this Agreement and any Renewal Term: (a) it has the requisite corporate power and authority to enter into this Agreement; (b) the performance by such Party of its obligations under this Agreement shall not constitute a material breach of, or otherwise contravene the terms of, any other agreement to which it is a party or under which it is otherwise bound; and (c) such Party has obtained or will obtain all third party consents, authorizations and approvals,

(including Educational Approvals in the case of Client), necessary for it to perform its obligations and exercise its rights under this Agreement.

#### **6. Tax Matters.**

6.1 Tax. The Services Fees are exclusive of any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) imposed or required by Applicable Law ("Tax"). Client will pay and be liable for any and all Tax imposed on, sustained, incurred, levied and measured by the cost, value or price of Services provided by Provider under this Agreement; provided, however, that in no event shall Client be liable for any Taxes that are imposed on or calculated by reference to the net income received or receivable by Provider, or specifically assessed against Provider in regards to its doing business in any particular jurisdiction. Notwithstanding anything to the contrary contained in this Agreement, in the event that any applicable Tax authority imposes a transaction privilege, sales or similarly denominated Tax on the Services, the responsibility for such Tax shall be borne equally by Parties.

6.2 Tax Withholding. Client shall (a) make all payments of Services Fees to be made by it to Provider hereunder without any Tax withholding, unless a Tax withholding is required by Applicable Law and (b) promptly upon becoming aware that Client must make a Tax withholding (or that there is any change in that rate or the basis of a Tax withholding) notify Provider accordingly. Provider shall co-operate in completing any procedural formalities necessary for Client to obtain authorization to make payment without a Tax withholding.

6.3 Tax Indemnity. Notwithstanding anything herein to the contrary, Provider shall pay to Client an amount equal to the loss, liability or cost that Client reasonably determines will be or has been (directly or indirectly) suffered for or on account of Tax on Provider in respect of the Agreement. This Section 6.3 (Tax Indemnity) shall not apply with respect to any Tax for which Client is not responsible under Section 6.1 (Tax) or any other Tax assessed on Provider under the law of any jurisdiction in which Provider is incorporated or operates, if that Tax is imposed on or calculated by reference to the net income received or receivable by Provider, or acts as a fee on Provider for doing business. Provided, the foregoing obligation of Client to pay any tax-related loss, liability, or cost hereunder shall be valid only to

the extent permitted under North Dakota law, and subject to available appropriations.

## **7. Indemnification for Third Party Claims.**

### **7.1 Indemnification of Client.**

Provider hereby agrees to defend Client and its directors, trustees, officers, employees, agents, successors and assigns (collectively, the "Client Indemnitees"), from and against all demands, suits, claims, actions, or causes of action (each, a "Claim") asserted or brought by any third party against any of Client or the Client Indemnitees for (i) any breach of or failure to perform by Provider under any terms of this Agreement; (ii) any act or action or omission of Provider causing damage or injury to Client or the Client Indemnitees; (iii) any violation of Applicable Law by Provider; or (iv) any of the Services or any use of the Provider Intellectual Property as provided by Provider and as expressly authorized under this Agreement, that infringes or misappropriates, as applicable, any U.S. patent or any copyrights or trade secrets under applicable laws of any jurisdiction within the United States. Notwithstanding the foregoing, Provider shall have no obligation or liability to the extent that, in the case of alleged infringement, the alleged infringement arises from (a) the combination, operation, or use of the Services or the Provider Intellectual Property with products, services, information, materials, technologies, business methods or processes not furnished by Provider; (b) modification to the Services or the Provider Intellectual Property which modifications are not made by or authorized by Provider; (c) failure to use any updates provided by Provider; or (d) use of the Services or the Provider Intellectual Property not in accordance with any instructions, documentation, or specifications provided by Provider.

### **7.2 Indemnification of Provider.**

Client shall, to the fullest extent permitted under North Dakota law, be responsible for its acts and omissions in connection herewith. The tort liability of Client shall be determined solely in accordance with Chapter 32-12.2 of the North Dakota Century Code, and subject to the conditions and limitations set forth therein.

**7.3 Conditions.** The indemnifying Party's obligations under this Section 7 (Indemnification for Third Party Claims) shall be conditioned upon the indemnified parties (i.e., the Provider Indemnitees or Client Indemnitees, as the case may be): (a) notifying the indemnifying Party promptly in writing of any Claim of which an indemnified party becomes aware, provided, however, that failure to provide such notice shall not relieve the indemnifying Party from its

obligations hereunder, except to the extent of any material prejudice to the indemnifying Party as a direct result of such failure; (b) not settling or compromising any Claim for which an indemnified party seeks or desires defense or indemnity under this Section 7 (Indemnification for Third Party Claims), in each case without the prior written consent of the indemnifying Party unless such settlement completely and forever releases the indemnified party with respect to such Claim; (c) giving the indemnifying Party sole authority to control fully, at the indemnifying Party's expense with counsel of its choice, the defense and settlement of any Claim (provided that the indemnifying party shall not settle or compromise any Claim without the prior written consent of the indemnified party which consent will not be unreasonably withheld, delayed or conditioned, or unless such settlement completely and forever releases the indemnified party with respect to such Claim); (d) having the right, at the indemnified parties' cost and expense, to participate in the defense of such Claim using legal counsel of its own choosing, provided, however, that such participation shall not reduce or impact the indemnifying Party's control of the defense and settlement as provided herein; and (e) furnishing all reasonable cooperation and assistance requested by the indemnifying Party. Notwithstanding anything to the contrary contained in this Section 7 (Indemnification for Third Party Claims), if, within fifteen (15) days following receipt by the indemnifying Party of notice of a Claim pursuant to subpart (a) of the preceding sentence, the Indemnifying Party fails to provide written notice to the indemnified parties of the indemnifying Party's intention to assume the defense of such Claim, then each indemnified party shall have the right to assume the sole control of the defense of such Claim by counsel of its choice, in which event if the Claim is in fact a Claim for which the indemnifying Party was obligated to defend, the indemnifying Party shall indemnify any such indemnified party for all reasonable attorneys' fees and costs incurred by such indemnified party in connection with such defense and such reimbursement of attorneys' fees shall be in addition to the indemnification for other amounts sought hereunder in connection with such Claim. For the avoidance of doubt, neither Party may settle a Claim without the prior written consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned unless such settlement completely and forever releases the indemnified party with respect to such Claim. Any defense tendered to Client under this Section 7 must comply with North Dakota law, including without limitation attorney



qualification and appointment under Section 54-12-08 of the North Dakota Century Code.

## **8. Confidentiality.**

Each Party acknowledges that Confidential Information may be disclosed to the other Party in connection with this Agreement.

**8.1 Definition.** "Confidential Information" means (a) any non-public, proprietary information, Intellectual Property and other confidential information, including, but not limited to, any technical and non-technical information regarding current, future and proposed business operations, products and services (including Courses and Course Materials), including for example and without limitation, information concerning research and development, financial information, procurement requirements, student and customer information and lists, business forecasts, sales information and marketing plans, descriptions, specifications and the like of a Disclosing Party, and (b) any information Disclosing Party has received from a third party which the Disclosing Party is obligated to treat as confidential or proprietary, that is provided or communicated by the Disclosing Party to the Receiving Party in connection with this Agreement after the Effective Date, including pursuant to Section 14 (Duty to Cooperate).

**8.2 Obligations.** Each Party (in such capacity, the "Receiving Party") acknowledges and agrees to (a) use with respect to the Confidential Information of the other Party (in such capacity, the "Disclosing Party") the same care and discretion to prevent such Confidential Information from being disclosed, published or disseminated as it employs to avoid disclosure, publication or dissemination of its own similar Confidential Information (but in no event less than reasonable care), (b) use the Disclosing Party's Confidential Information only for the purpose for which it was disclosed, and (c) not disclose, disseminate or provide access to the Disclosing Party's Confidential Information to any person other than to those employees and agents who (i) have a need to know it in order to assist the Receiving Party in performing its obligations hereunder, or to permit the Receiving Party to exercise its rights under this Agreement, and (ii) are legally bound by the same obligations regarding Confidential Information as the Parties are subjected to in this Section 8 (Confidentiality).

**8.3 Permitted Disclosures.** The Receiving Party may disclose the Confidential Information of the Disclosing Party (a) to a third party subcontractor who

is involved in providing Services under this Agreement or a third party who is contemplating entering into a transaction with the Receiving Party pertaining to a financing event or a sale of all or any portion of its business, provided that: (i) such disclosure is reasonably necessary for the third party to perform its duties or evaluate the potential transaction; (ii) the Receiving Party causes the third party to be bound to the same obligations regarding Confidential Information as the Parties are subjected to in this Section 8 (Confidentiality); and (iii) the Receiving Party assumes full responsibility for the acts or omissions of such third parties, no less than if the acts or omissions were those of the Receiving Party; (b) to the extent required under the terms of any credit agreement, indenture or related agreement entered into by the Receiving Party or one of its Affiliates; or (c) to an Affiliate, provided that such Affiliate is bound to the same obligations regarding Confidential Information as the Parties are subjected to in this Section 8 (Confidentiality). Without limiting the generality of the foregoing, neither Party will publicly disclose the terms of this Agreement, unless required by Applicable Law, including any Educational Law, without the prior written consent of the other. In addition, Client may disclose this Agreement to an Educational Agency when requested by such Educational Agency. Furthermore, neither Provider nor Client will: (A) acquire any right in or assert any lien against the Confidential Information of the other Party, other than as provided in this Agreement; or (B) sell, assign, lease or otherwise dispose of Confidential Information of the other to third parties (except in connection with a sale of all or substantially all of such Party's assets to which this Agreement relates) or commercially exploit such Confidential Information, other than as permitted in this Agreement. In addition, the Parties shall take reasonable steps by agreement or otherwise so that their Affiliates, employees, subcontractors and consultants comply with these confidentiality provisions.

**8.4 Exclusions.** Notwithstanding anything to the contrary in the foregoing, Confidential Information does not include, and this Section 8 (Confidentiality) will not apply to, any information that the Receiving Party can demonstrate was:

**8.4.1** at the time of disclosure of such information to the Receiving Party, in the public domain;

**8.4.2** information related to applicants to Client that do not enroll in Client within three months of initial outreach to such applicant;



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

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

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

8.4.6 independently developed by the Receiving Party without reference to Confidential Information of the Disclosing Party; or

8.4.7 not covered by at least one exception to North Dakota's open records laws.

Any disclosure of Confidential Information required pursuant to any Applicable Law or valid court order from a court of competent jurisdiction shall not be considered a breach of this Agreement; provided, however, that the Receiving Party shall advise the Disclosing Party of such required disclosure promptly upon learning thereof in order to afford the Disclosing Party a reasonable opportunity to contest, limit and/or assist the Receiving Party in crafting such disclosure.

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

8.6 Period of Confidentiality. Confidential Information disclosed pursuant to this Agreement will be subject to the terms of this Agreement until such time as it ceases to be characterized as Confidential Information under one or more of clauses 8.4.1 through 8.4.6 of Section 8.4 (Exclusions).

8.7 Return of Confidential Information. Within five (5) Business Days after the termination of this Agreement, the Receiving Party shall destroy or deliver to the Disclosing Party, at the Disclosing Party's option, (a) all materials furnished by the Disclosing Party, and (b) all materials in the Receiving Party's possession or control (even if not furnished by the Disclosing Party) that contain or disclose any of the Disclosing Party's Confidential

Information. The Receiving Party will provide the Disclosing Party a written certification of the Receiving Party's compliance with the Receiving Party's obligations under this Section 8.7. Notwithstanding the foregoing, Confidential Information stored on back-up storage media in the normal course of business need not be returned or destroyed, but shall remain subject to the terms of this Agreement in accordance with Section 8.6 (Period of Confidentiality).

## **9. Intellectual Property Rights.**

### **9.1 Definitions.**

9.1.1 As used herein, the term "Intellectual Property" shall mean any and all technology, inventions, processes, know-how, designs, works of authorship, and any other technical subject matter related thereto. The term "Intellectual Property" also includes all intellectual property rights or similar proprietary rights related to or protecting the foregoing, including (a) all inventions, all improvements thereto and all patents, patent applications, provisionals and patent disclosures, together with all reissues, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof, (b) all registered and unregistered trademarks, service marks, trade dress, logos, trade names, registered domain names, and corporate names, including all goodwill associated therewith, and all applications (including intent-to-use applications), registrations, and renewals in connection therewith, (c) all copyrightable works, all copyrights and all applications, registrations and renewals in connection therewith, including all rights in works of authorship, curricula, program materials, translations, abridgments, revisions compilations and derivative works, (d) all trade secrets, customer lists, student lists, employer lists, alumni lists, supplier lists, pricing and cost information, business and marketing plans and other confidential business information (including, without limitation, ideas, formulas, compositions, know-how, techniques, research and development information, drawings, specifications, designs, plans, proposals, and technical data), (e) all computer programs and related software, including source code and object code thereof, data, data tapes, databases and related manuals, notes, and documentation, and (f) all copies and tangible embodiments thereof.

9.1.2 As used herein, the term "Client Intellectual Property" means the Intellectual Property expressly identified in a Service Addendum as Client Intellectual Property.

9.1.3 As used herein, the term **"Provider Intellectual Property"** means any and all Intellectual Property in (i) all of the content of the Courses and the Course Materials and any modifications, enhancements, or developments ("**Improvements**"), (ii) all technology, computer programs and software source code, developed by Provider for purposes of providing the Services hereunder, including Provider-developed or Provider-acquired user interface designs necessary to facilitate Client's and its students' access to the Course Materials, logic and data modules, algorithms, feature sets and source code, and documentation relating thereto, and (iii) the Intellectual Property expressly identified in a Service Addendum as Provider Intellectual Property.

9.2 **Ownership by Each Party.** Each Party (and their respective Affiliates) (as the "**Owner Party**") owns and shall retain all right, title and interest in and to any and all (a) Confidential Information of such Owner Party, (b) all Intellectual Property of such Owner Party or its Affiliates existing as of the Effective Date, and (c) except as may be expressly provided otherwise in this Agreement or a Services Addendum, all Intellectual Property independently developed by such Owner Party or its Affiliates after the Effective Date. For the avoidance of doubt, Intellectual Property developed by Provider, whether in connection with the provision of the Services or outside the provision of the Services, shall be Intellectual Property independently developed by Provider for purposes of the foregoing and Provider will be the "Owner Party" of such Intellectual Property, except that, to the extent that such Intellectual Property embodies Client Confidential Information, such Intellectual Property shall be deemed Client Intellectual Property.

9.3 **License to Provider Intellectual Property.** Subject to the terms and conditions of this Agreement, Provider, on behalf of itself and its Affiliates, hereby grants to Client, during the Initial Term and any Renewal Term and under the Intellectual Property rights owned or controlled by Provider, a non-exclusive, non-transferable, worldwide, right and license, without the right to sublicense, to use the Provider Intellectual Property, including the right with respect to only the Course Materials to reproduce, distribute copies, publicly display and publicly perform the Course Materials, in each case solely in connection with the Client's Educational Activities in accordance with the terms of this Agreement.

9.4 **License to Client Intellectual Property.** Subject to the terms and conditions of this Agreement, Client, on behalf of itself and its Affiliates, hereby grants to Provider, during the Initial Term and any Renewal Term and under the Intellectual Property rights owned or controlled by Client or its Affiliates, a non-exclusive, non-transferable, worldwide, royalty-free right and license, without the right to sublicense, to use, reproduce, create derivative works and to modify, enhance and develop improvements to the Client Intellectual Property (other than the Client Marks) and distribute copies, publicly display and publicly perform such Client Intellectual Property, in each case solely in connection with the performance by Provider of Services under this Agreement.

9.5 **License to Marks.**

9.5.1 **Client Marks.** Subject to the terms and conditions of this Agreement, Client, on behalf of itself and its Affiliates, hereby grants to Provider, during the Initial Term and any Renewal Term, a worldwide, non-exclusive, non-transferable, royalty-free right and license, without the right to sublicense, to use, reproduce and display the Client Marks (excluding athletic marks) on and in connection with the development, marketing, advertising, promotion, sale, operation and distribution of the Courses and Services related to the Courses, in each case solely in connection with the performance by Provider of the Services. A list of Client Marks as of the Effective Date is set forth on Schedule A to this Agreement.

9.5.2 **Provider Marks.** Subject to the terms and conditions of this Agreement, Provider, on behalf of itself and its Affiliates, hereby grants to Client, during the Initial Term and any Renewal Term, a worldwide, non-exclusive, non-transferable, royalty-free right and license, without the right to sublicense, to use, reproduce and display the Provider Marks on and in connection with the development, marketing, advertising, promotion, sale, operation and distribution of the Courses and Services related to the Courses, as designated by Provider. A list of Provider Marks as of the Effective Date is set forth on Schedule B to this Agreement.

9.6 **Reservation of Rights.** Subject to the rights granted hereunder, Provider retains all right, title, and interest in and to the Provider Intellectual Property, and Client acknowledges and agrees that it neither owns or acquires any rights in any of the Provider Intellectual Property. Client further acknowledges and agrees that Provider retains the

right to use Provider Intellectual Property for any purpose in Provider's sole discretion and Provider reserves all rights not expressly granted in this Agreement.

9.7 Restrictions on Trademark Usage. Each Party shall have the express right to monitor the other's licensed use of Marks and to bring to the user's attention any observed misuse, and that the uncured misuse of the other Party's marks shall constitute a material breach. Each Party further agrees that it shall not directly or indirectly at any time:

9.7.1 use any of the other Party's Marks for or in connection with any business of Provider other than the provision of Services to Client under this Agreement;

9.7.2 use any of the other Party's Marks in combination with any other trade name, trademark, service mark, corporate name, logo, domain name or trade dress, unless approved in advance in writing by the other Party;

9.7.3 use any trade name, trademark, service mark, domain name, logo or trade dress which, in the other Party's reasonable opinion, is likely to be confused with, tarnish or dilute any of the Marks; or

9.7.4 apply to register, obtain, use or own any domain name or trademark comprising or related to any of the other Party's Marks, or any confusingly similar marks.

9.8 No Additional Rights. Except as expressly provided in this Agreement, a Services Addendum, or a separate written agreement between the Parties, neither Party shall receive, by virtue of this Agreement, any rights of ownership to, or any license or other rights in or to, any Confidential Information or Intellectual Property owned by the other Party.

10. Force Majeure. Neither Party shall be liable or in breach of this Agreement for any interruption of the provision of Services, or any delay or failure to perform under this Agreement when such interruption, delay or failure results from causes beyond that Party's reasonable control, including as a result of strikes, lock-outs or other labor difficulties; acts of government, riot, insurrection or other hostilities; embargo, fuel or energy shortage; fire, flood, acts of God, wrecks or transportation delays; or inability to obtain necessary labor, materials or utilities from usual sources. In such event, a Party's obligations hereunder shall be postponed for such

time as its performance is suspended or delayed on account thereof. Upon the cessation of the force majeure event, each Party will use commercially reasonable efforts to resume its performance with the least possible delay.

11. Available Remedies. Notwithstanding anything herein to the contrary, the Parties agree that the failure of a Party to perform any obligation which arises under Section 8 (Confidentiality) or Section 9 (Intellectual Property Rights) of this Agreement will cause irreparable harm to the other Party which may not be fully or adequately compensated by the award and/or payment of monetary damages alone. In the event of actual or threatened breach by a Party of Section 8 (Confidentiality) or Section 9 (Intellectual Property Rights), the Parties agree that the non-breaching Party shall be entitled to seek injunctive or other equitable relief in order to enforce or prevent any such conduct or continuing violation, without having to post a bond or other security, and the breaching Party agrees not to raise the defense of an adequate remedy at law in any such proceeding.

12. Relationship of the Parties. The relationship of Provider to Client under this Agreement shall be that of an independent contractor. Persons rendering Services pursuant to this Agreement shall not be deemed employees of Client, and shall not be entitled to or qualified under any employee benefit plans, including pension, health and insurance plans, provided by Client for its employees. Each Party shall be solely responsible for the fulfillment of all labor and Social Security provisions that affect the labor relationships with its personnel, either currently in force or that may be passed during the Initial Term of this Agreement and any Renewal Term, expressly discharging the other Party from any liability for the breach thereof. Except as provided in Section 6 above, each Party shall hold the other Party harmless in connection with any Tax, salaries, quotations and national insurances to be paid in connection with its activity, to the extent such Tax, salaries, quotations and national insurances are imposed upon such other Party under Applicable Law or under the terms of this Agreement. No Party or its employees are authorized and no Party or its employees, agents or representatives shall at any time attempt to act on behalf of the other Party to bind the other Party in any manner whatsoever to any obligations.

13. Duty to Cooperate. If a Governmental Entity, Educational Agency, or third party files any type of Claim, or commences an investigation or audit against Provider or one of its Affiliates or Client

or one of its Affiliates, each Party (and its respective Affiliates, to the extent applicable) shall use commercially reasonable efforts to cooperate with the other's defense. Each Party (and its Affiliates, to the extent applicable) further agrees in principle to execute such joint defense agreements, on customary terms, as may be necessary or appropriate for the protection of any privilege or confidentiality in the course of cooperating with the other's defense. Provider and Client (and their respective Affiliates, to the extent applicable) agree to use commercially reasonable efforts to make available to the other upon reasonable request in writing any and all non-privileged or non-proprietary documents that either Party (or either of their respective Affiliates, to the extent applicable) has in its or their possession, which relate to any such claim, lawsuit, charge, investigation or audit. However, neither Party (nor any of their respective Affiliates) shall have the duty to cooperate with the other Party if the dispute is between the Parties themselves, nor shall this provision preclude the raising of cross-claims or third party claims between Provider and Client (or one of their respective Affiliates) if the circumstances justify such proceedings. The Parties agree that this provision shall survive the termination of this Agreement.

**14. Survival of Obligations.** Each Party's obligations under this Section and Sections 4.5 (Effect of Termination), 2.7 (Compliance with Laws), 2.11 (Responsibility for Affiliates), 2.12 (Disclaimer of Warranties), 3 (Fees and Payments), 6 (Tax Matters), 7 (Indemnification for Third Party Claims), 8 (Confidentiality), the terms in Section 9 (Intellectual Property Rights) with respect to ownership of Intellectual Property and the irrevocable licenses, 10 (Limitation of Liability), 12 (Available Remedies), 13 (Relationship of the Parties), 14 (Duty to Cooperate), and 17 (Miscellaneous) shall survive the termination of this Agreement to the extent permitted by Applicable Law.

**15. Insurance.** Each Party shall be solely responsible for obtaining workers compensation insurance for its employees and agents and such other insurance as may be required by Applicable Laws. In addition, each Party agrees to carry (or, in Client's case, to self-insure for) commercial general liability insurance in an amount not less than (a) \$3,000,000 in the aggregate, (b) \$1,000,000 products and completed operations aggregate, (c) \$1,000,000 personal and advertising injury, and (d)

\$1,000,000 per occurrence. Each insurance policy required above shall name the other Party as additional insured on broad form endorsements with respect to all bodily injury, personal injury, advertising injury, and property damage liability arising out of the Party's operations, services or products. Each such insurance policy shall be endorsed to provide that such coverage shall be primary over any coverage available to the other Party under its own insurance program in the event of any suit, claim, damages or loss. Each Party shall provide to the other party a copy or copies of a certificate or certificates of insurance or, in Client's case, evidence of a self-insurance program, demonstrating that the insurance coverage set forth above is in full force and effect no later than sixty (60) Business Days after the date of the Parties' execution of this Agreement. Each party shall endeavor to provide the other Party at least thirty (30) days' advance notice of any cancellation or material change in any policy of insurance for coverage required under this Agreement. Further, each Party shall maintain any insurance coverage referenced herein for a period of five (5) years after termination of this Agreement. In lieu of the foregoing general liability insurance, Client shall at all times remain a participant in the North Dakota risk management fund, with all of the coverages afforded under North Dakota law. A Certificate of Financial Responsibility evidencing such participation will be issued by the State of North Dakota to Provider upon request.

**16. Miscellaneous.**

**16.1 Notices.** All notices to a Party shall be sent addressed to such Party at the address as may be specified by the Party from time to time in a notice given as provided in this Section, *provided* that the initial notice address for each Party is as follows:

if to Provider:

Exeter Education LLC

8444 N 90th St #110, Scottsdale, AZ 85258

Attention: David Weems

Email: [REDACTED]

if to Client:

University of North Dakota

3264 Campus Road, Stop 9021

Grand Forks, ND 58202-9021

Attention: Lynette Krenelka

Email: lynette.krenelka@UND.edu

All notices are effective the next day, if sent by recognized overnight courier or facsimile, or five (5) days after deposit in the United States mail, postage prepaid, properly addressed and return receipt requested. "Notice" herein shall not include notice of claims for money damages against Client or the State of North Dakota, which shall instead be governed by applicable North Dakota statutes.

**16.2 Amendment; Waiver.** This Agreement, including the Exhibits and any Services Addendum, may be amended or modified only in a written instrument executed by each Party hereto. The failure at any time of a Party to require performance by any other Party of any responsibility or obligation required by this Agreement shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Agreement by any other Party constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

**16.3 Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of each party hereto. Provider may assign this Agreement, in whole or in part, at any time, in its sole discretion. Neither this Agreement nor any right or obligation hereunder may be assigned or delegated in whole or in part by Client to any other person or entity, without the prior written consent of the Provider.

**16.4 Third Party Rights.** Except to the extent provided in Section 7 (Indemnification for Third Party Claims), nothing in this Agreement, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any person other than the Parties any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein.

**16.5 Choice of Law.** This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of North Dakota, without giving effect to the principles of conflict of laws thereof.

**16.6 Headings.** The headings of the Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

**16.7 Entire Agreement.** This Agreement, together with the Appendices, Exhibits and Schedules hereto and the agreements and instruments expressly provided for herein, as all of the foregoing may be amended from time to time in accordance with the terms hereof, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, among the Parties hereto with respect to the subject matter hereof.

**16.8 Severability.** Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force in all other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Law or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties hereto shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

**16.9 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**16.10 Further Assurances.** Each Party shall execute such deeds, assignments, endorsements, evidences of transfer and other instruments and documents and shall give such further assurances as shall be necessary to perform such Party's obligations hereunder.

**16.11 Dispute Resolution.**

**16.11.1** In the event of any dispute, claim or controversy arising out of or relating to this Agreement, including, but not limited to, its creation,

validity, interpretation or enforcement (a "Dispute"), the Parties shall endeavor to settle the Dispute through their respective Designees. If the Designees are unable to resolve the Dispute within 30 days of receipt of written notice by a Designee from the other Designee identifying the dispute and initiating such discussions, then either Party may proceed with an action or proceeding under Section 16.11.2 below. Notwithstanding the provisions of this Section 16.11.1, either Party shall have the right to seek injunctive or other equitable relief from a court of competent jurisdiction to protect its Confidential Information or Intellectual Property Rights.

16.11.2 Any lawsuit arising hereunder shall be brought exclusively in the Northeast Central Judicial District Court of North Dakota. Each Party shall be responsible for its own costs and attorney fees. Neither Party waives its right to a jury trial. Nothing herein shall prevent the Parties from agreeing to submit a dispute for alternative resolution, provided that such agreement must be made in writing and only after such time that the dispute has arisen.

16.11.3 RESERVED.

16.12 Certain Interpretive Matters.

16.12.1 Unless the context requires otherwise, (i) all references to Sections or Exhibits are to Sections or Exhibits of or to this Agreement, (ii) words in the singular include the plural and vice versa, (iii) the terms "*include*", "*includes*" "*including*" means "include, includes or including without limitation," and (iv) the terms "*herein*," "*hereof*," "*hereunder*" and words of similar import shall mean references to this Agreement as a whole and not to any individual Section or portion hereof. All references to "\$" or dollar amounts will be to lawful currency of the United States of America. All references to "\$" or dollar amounts, or "%" or percent or percentages, shall be to precise amounts and not rounded up or down. All references to "*day*" or "*days*" will mean calendar days. All references to matters "*agreed in writing by the Parties*" refer to other written agreements that remain effective that were entered into on or prior to the date hereof or written agreements entered into by the Parties at some later date.

16.12.2 No provision of this Agreement will be interpreted in favor of, or against, any of the parties by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision

is inconsistent with any prior draft of this Agreement or such provision.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have executed and delivered this MASTER SERVICES AGREEMENT as of the day and year first above written.

**PROVIDER:**

EXETER EDUCATION LLC

By: 

Name: David Weems

Title: Chief Operations Officer

**CLIENT:**

University of North Dakota

By: 

Name: Lynette Krenelka

Title: Director OEL and TTaDA

University of North Dakota

By: 

Name: Thomas M. DiLorenzo

Title: Vice President for Academic Affairs and Provost



## **EXHIBIT A**

### **Description of Services**

With respect to Client, Provider shall, subject to the terms and conditions in this Agreement, provide a specific bundle of technological, marketing, promotional, development and/or support Services. The following list and description represents the set of Services that Provider will provide to Client under this Agreement.

**Initial Term:** This Agreement will be for one year with the option for one-year renewals thereafter. This Agreement may be terminated by either party, upon written notice. The effective date of any termination shall be one (1) month from the date of receipt of the notice by the other party. Upon termination, University students then currently enrolled in a Woz-U course will be permitted to complete the course for which they have enrolled and paid. All payments due to University must be paid in full prior to the end of the Agreement.

### **Courses & Programs Serviced:**

Inspired by Steve Wozniak, co-founder of Apple Computer, we specialize in technology and career-based programs designed to get people into the workforce quickly and affordably. Woz-U is passionate about inspiring the next generation of innovators and developing the workforce of the future. Led by higher education experts, students will learn the necessary skills to take flight within the technology industry. These courses are software and technology stack agnostic which is critical in most job applications. Each program can be sequenced to an employer's tech stack and specific software development talent needs. Woz-U courses are not MOOC-like, self-paced, self-directed online courses but instead are structured courses that include synchronous and asynchronous learning sessions and requires students to "attend" a minimum of 20 or 40 hours each week.

All instruction is delivered via a combination of high quality video-based instruction, instructor led workshops, and exercises. Course materials, exercises/projects and career services are performed and delivered on Woz-U's patented learning platform or the "adaptive lab". The platform is both mobile and digital agnostic. Students have 24/7 access to online programs with "20/6" access to live instructors and mentors. Courses are continuously and frequently updated – a key feature of the EaaS model.

Each course is either 20 Hrs/Week or 40 Hrs/Week and includes 480 hours of course content and curriculum (8-10 modules) and also a capstone, final, or group project; Woz-U's instructors and one-on-one mentors (approx. 48 hours/enrollee), Career Services, "Woz for Life" program. The market price of each course ranges from \$11,800 to \$13,800 (subject to change). Woz-U will work with students for payment of the courses.

### **Additional Fees & Commitments:**

Client will be paid for each enrollment in Woz-U online courses for students enrolled after the 21 day drop period. Payment to Client shall occur every quarter for the periods including: Jan-March, April-June, July-September, October-December. Payment will be due 30 days following the end of each quarter. The following payment plan will be used to pay University:

1-15 students – University compensated \$1,500/enrollee

16-30 students – University compensated \$1,600/enrollee

31-45 students – University compensated \$1,700/enrollee

46 students+ - University compensated \$1,800/enrollee

### **Overview of Agreement & Responsibilities:**

University and Woz-U shall partner to deliver the newest generation of Software Developer, Data Science, Cybersecurity and IOS online professional development training courses to working professionals. If additional online professional development training courses are developed through Woz-U, the University shall have the opportunity to offer the additional training courses as well. University agrees to promote and refer interested students to Woz-U for specific training. No set up fee is required of University to enter into this Agreement.

The following responsibilities are outlined for each:

a. University shall:

- Work with Woz-U on co-branding a website for each professional development training online course
- Market to regional employers that may be interested in the Woz-U online training courses
- Post the URL for students to enroll in Woz-U online courses
- Work with Woz-U to develop a joint press release announcing the partnership and online course offerings
- Request baseline data on each student enrolling in Woz-U online courses and enter Woz-U University enrollees into University database for non-credit tracking purposes

b. Woz-U shall:

- Work with University on co-branding a website, blogs and other marketing materials promoting each professional development training online course
- Work with University to develop a joint press release announcing the partnership and online course offerings

- Provide the URL to University for students to enroll in Woz-U online courses
- Provide dedicated toll-free number and email for University enrollees
- Accept payment and enroll student in appropriate online course
- Comply with all applicable PCI standards with respect to payments solicited from University enrollees
- Monthly, provide UND contact: UND.courses@und.edu with each student enrollment, information to include:
  - Student email address
  - First and last name
  - Address, City, State/Province, Zip/Postal Code, Country
  - Phone
  - Date of birth
- Provide each enrollee access to the learning platform and course materials
- Provide all instruction and support for each University enrollee
- Notify enrollees and University contact of any system outages and what corrective action is being taken
- Pay University quarterly for students enrolled in Woz-U online courses (see payment information)
- Upon successful completion, provide a certificate of completion co-branded with University
- Provide comprehensive career services including building a resume, interview training, and help identifying relevant positions in related fields
- Provide graduates access to create a virtual profile on the exclusive digital employment networking platform, Woz-U Connect