

**Program Term Sheet**  
**The Ohio State University Coding Bootcamp**  
**(the "Coding Program")**

As described at Recital D of the Agreement between the Institution and TES dated May 29, 2020, this Program Term Sheet (this "**Term Sheet**") represents the agreement of the Institution and TES for the offering of the Coding Program pursuant to the terms and conditions of the Agreement between the Institution and TES.

Pursuant to the terms and conditions of the Agreement, the Parties agree to work in collaboration to offer and market the Coding Program described by this Program Term Sheet, and provide support services to students and graduates of the Coding Program.

**I. Program Details.**

1. Program Name: The Ohio State University Coding Bootcamp
2. Program Description: A 24-week program that combines front-end and back-end web development, as well as big-picture training to students. The rigorous and fast-paced program covers both theory and application, and exposes students to both individual and group-based challenges in order to teach the importance of teamwork. Areas of focus include browser-based technology, databases, server-side deployment, quality assurance and testing, and more.
3. Term: This Term Sheet, subject to earlier termination in accordance with Section 10 in the Agreement, will be for a period of five (5) years from the later of (i) the date of execution, and (ii) the first day of teaching (i.e., the first classroom session of the first cohort hereunder), provided, however, that the term shall be extended for a period of time during which any cohort permitted hereunder is in session such that this Term Sheet shall be in effect until all Coding Program cohorts have concluded.
4. Initiation of Marketing: On or about July 2020
5. Target Date of First Class: On or about October 2020
6. Approximate Instructional Hours of the Coding Program: 240
7. Number of Admissions Entry Points Each Calendar Year: Minimum of 4
8. Coding Program Tuition and Fees: To be mutually agreed in writing and made a part hereof (email acceptable)

9. Admissions Requirements:

Degree Required at Entry	None
Restrictions on Degree Field of Study	None
Required Prerequisites	None
Certificates or Licensure Required	None
Admissions Tests and Score Requirements	None
Exceptions/Waivers to Test Requirements	None
Minimum Grade Point Average	None
Other Admissions Requirements	None

10. Instructional Locations:

Campus Location/Address/Classroom	To be agreed
Campus Location/Address/Online	As needed add further rows

11. Financial aid, scholarships, or other discounts to be made available to Coding Program students:  
To be agreed.12. Approved Instructors: To be submitted to Institution for prior written approval (email acceptable) and subject to Section 3.2 in the Agreement prior to hiring.

IN WITNESS WHEREOF, the Parties have executed this Program Term Sheet as of the date first set forth above.

TRILOGY EDUCATION SERVICES, LLC



....., Greg Calverase, Managing Director  
duly authorized for and on behalf of **TES**

THE OHIO STATE UNIVERSITY



....., Michael Papadakis, Senior Vice President for Business & Finance and  
CFO duly authorized for and on behalf of **Institution**



....., Robert Mick, Director, Professional & Distance Education Programs /  
OSU Program Director

## Agreement for Services

**Dated:** May 29, 2020

### PARTIES

- (1) **Trilogy Education Services, LLC**, a Delaware limited liability company with an address of 7900 Harkins Road, Lanham, MD 20706 (“**TES**”); and
- (2) **The Ohio State University, an instrumentality of State of Ohio**, with an address of 1080 Carmack Rd, Columbus, Ohio 43214 (“**Institution**” and together with TES, the “**Parties**” and each, individually, a “**Party**”).

### RECITALS

- (A) TES specializes in providing Services (as defined below) which enable TES partner institutions to offer non-degree education programs designed to prepare students for high growth careers in the digital economy (each, a “**Program**”).
- (B) TES desires to provide a suite of services including proposed program curricula and course materials, identification of qualified instructors, marketing and recruitment, student support and career services (collectively the “**Services**”).
- (C) Institution desires to offer those certain Programs in collaboration with TES (i) in a classroom-based environment supported by video content at facilities provided by the Institution, (ii) online, (iii) via hybrid delivery methodology, and/or (iv) in a self-paced, mentor driven format.
- (D) This Agreement defines the terms pursuant to which TES shall provide the Services which shall enable the Institution to offer Programs as set forth in one or more Program Term Sheets in the form of Appendix A attached to this Agreement (each a “**Program Term Sheet**”).

### 1. TERM

- 1.1. This Agreement shall remain in effect until terminated by either party as provided herein.
- 1.2. Notwithstanding any termination of this Agreement, as further defined in Section 10, or any Program Term Sheet (as hereinafter defined), the term shall be extended

for a period of time during which any cohort is in session such that this Agreement shall be in effect until all cohorts have concluded.

## **2. STRUCTURE OF THE PROGRAM**

- 2.1. As more fully described in each Program Term, each Program shall be delivered as set forth in such Program Term Sheet, which shall include, as applicable, video- and synchronous and asynchronous internet-based instruction and supplemental material.
- 2.2. The Parties agree that the location for the face-to-face sessions for each of the Programs will be as described in each Program Term Sheet.
- 2.3. Additional Programs shall be offered in accordance with such additional Program Term Sheets as may be entered into by the Parties from time to time.

## **3. OBLIGATIONS OF THE PARTIES**

- 3.1. Subject to prior approval and at the Institution's sole discretion, and in accordance with the license granted pursuant to Section 8 of this Agreement, TES will be primarily responsible for marketing the Program under the Institution's name and brand. The Institution will support the marketing of Programs with additional marketing and publicity comparable to that currently provided for other non-degree, non-credit programs offered by the by the Institution, as more fully described herein or in each Program Term Sheet.
- 3.2. TES is responsible for identifying and employing qualified instructors for the conduct of the Programs (hereinafter "**Program Instructors**"). TES shall be entitled to determine contract terms and remuneration of qualified instructors. The engagement of Program Instructors is subject to approval by the Institution, provided that no person shall be engaged as a Program Instructor without the consent of TES. Program Instructors shall be subject to periodic oversight and evaluation by the Institution. Further, TES represents and warrants that each Program Instructor will be subject to the Institution's Background Check Policy, found at: <https://hr.osu.edu/wp-content/uploads/policy415.pdf>, as applicable.
- 3.3. TES will, subject to the general oversight of the Institution, provide the marketing, student support, placement and financial management services, including collection of tuition, as set forth herein and in each Program Term Sheet.
- 3.4. TES shall, subject to the general oversight of the Institution, be responsible for providing the curriculum and course materials required for the Programs. All such curriculum and course materials shall be subject to the prior review and written

approval of the Institution (email acceptable) in a manner comparable to such Institution's review of other of its non-degree, non-credit programs, such review and approval not to be unreasonably delayed or refused.

- 3.5. The Institution will provide at its expense appropriate classroom and computer lab space for the Programs as described in each Program Term Sheet. The institution shall provide student accommodations related to the classroom and the teaching therein as required by the Americans with Disabilities Act.
- 3.6. Admission requirements and for the admission of prospective students for enrollment in the Programs shall be agreed upon as part of the Program Term Sheet. The Institution shall secure and is solely responsible for maintaining any license, approval, accreditation, or authorization necessary to offer the Programs.
- 3.7. The Institution shall award a certificate of completion in the Institution's name for every student who successfully completes a Program in accordance with its policies and procedures. The form of certificate of completion shall be mutually agreed.
- 3.8. The Institution agrees that prospective student leads for the Programs that are received through the Institution or Institution website, subject to its privacy policies, will be promptly forwarded to TES for follow-up and processing by TES.
- 3.9. TES shall be responsible for generating all enrollments for the Program based on criteria mutually agreed between TES and the Institution. TES shall be responsible for independently marketing the Program utilizing the Institution's brand. TES agrees that any use of the Institution's brand will be subject to the Institution's prior written approval (email acceptable) and such restrictions on the use of said brand as the Institution in its sole discretion may determine.
- 3.10. The College of Engineering Professional and Distance Education Program agrees it will not offer any program substantially similar to any Program (i.e., a non-credit, boot camp format class in the subject matter covered by any Program(s) offered hereunder) offered under this Agreement or a Program Term Sheet for a period of six (6) months following the termination of this Agreement (the "**Restricted Period**").
- 3.11. The Parties will collaborate in good faith on any public notification concerning this Agreement any other activities of the Parties involving both organizations, the timing, content, delivery and media to be used for any and all publicity about the Parties' relationship or about the Programs or any other activities involving both Parties, and agree that all such public notification shall be subject to prior written approval by both Parties. Both Parties retain the absolute right to determine whether permission will be granted to use that Party's name or brand or when and how to publicize the relationship between the Parties. In the event that the

Institution receives a freedom of information act, public records or similar request for information related to the business relationship created by this Agreement, to the extent possible, the Institution shall promptly notify of receiving such request and, in any event, prior to releasing any information regarding the subject matter hereof. The Institution covenants and agrees to reasonably cooperate with TES in responding to any such request and to limit any disclosure resulting therefrom to protect any confidential and proprietary information belonging to TES and limiting any disclosure to the minimum required to satisfy the request under applicable law.

- 3.12. Throughout the term of this Agreement, the Parties agree to meet at least every six (6) months, at a mutually agreed to time and place (including via video or conference call), to evaluate the Programs currently being offered and to consider the offering of additional Programs under the terms of this Agreement.
- 3.13. TES may choose to offer financial support in the form of special discounts, financing options and/or scholarships to interested, selected students. The Institution may provide information to students regarding obtaining financial support, including loans.
- 3.14. The Parties agree that the tuition charged for each Program will be determined by mutual prior written agreement between the Parties (email acceptable). Any amendment to the tuition charged for any Program shall be subject to mutual prior written agreement of the Parties (email acceptable).
- 3.15. The Parties agree that for a period of six (6) months following the termination or expiration of this Agreement, they shall each be prohibited from using (a) the Program name or brand that the Parties used in connection with the Programs or, (b) the Program website.
- 3.16. The Parties shall take all actions necessary to comply with all applicable laws. Further, each party will comply with all applicable U.S. and local laws, including laws concerning protection of student data (e.g. the Family Educational Rights and Privacy Act), Non Discrimination 41 CFR 60-300.5 (a) and 60-741.5(a), export controls and sanctions (e.g., the International Traffic in Arms Regulations, Export Administration Regulations, and Office of Foreign Assets Control regulations), anti-corruption laws (including the U.S. Foreign Corrupt Practices Act). Further, TES shall comply with all written Institution policies which apply to vendor and contractor employees, including Alcohol; Drug-Free Workplace policy; Background Check policy; Tobacco Free Ohio State policy; and Transportation and Parking Rules found here: <https://policies.osu.edu/>.

#### **4. CONSIDERATION FOR TES SERVICES**

- 4.1. In consideration for the provision of the services provided by TES as set forth in this Agreement and further detailed in each Program Term Sheet, TES shall be compensated through a fee structure arrangement as provided herein or in such Program Term Sheet. For the convenience of the Parties, except as provided herein to the contrary TES shall collect all tuition derived from enrollments in the Programs and remit to the Institution such sum as shall become due.
- 4.2. TES shall collect all fees and other revenue related to the Program on behalf of the Institution except where the Institution is required to collect such amounts (e.g., loans, grants, etc.).

#### **5. ECONOMICS AND REPORTING**

- 5.1. TES shall retain [REDACTED] percent [REDACTED] of all Gross Program Revenue after deduction of credit card fees, discounts, bad debt expense, and amounts actually refunded in accordance with the Program's published refund policy or otherwise agreed by the Parties, and shall remit the remaining [REDACTED] percent [REDACTED] to Institution.
- 5.2. TES shall generate a quarterly revenue report as of the end of each calendar quarter that will show quarterly enrollments and revenue recognized. That report will be received by Institution no later than forty-five (45) days after the end of the calendar quarter.
- 5.3. Institution will have thirty (30) days after receipt of the revenue report to review and forward any questions to TES. If no questions are received by TES within thirty (30) days the revenue report will be deemed agreed to and final.
- 5.4. Payment of the amount due in full (net of any amounts received by Institution as a result of loans, grants or otherwise) will be received by Institution no later than thirty (30) days after the date the Parties agree on the calculation and the amount to be paid to Institution.
- 5.5. The payment described herein represents the total financial agreement between TES and Institution.

#### **6. DATA PRIVACY AND CONFIDENTIALITY**

- 6.1. Each Party acknowledges that, from time to time, each Party may receive confidential and proprietary information, data, knowledge or know-how of the other Party ("**Confidential Information**"). Each Party shall not, at any time, disclose to any person any Confidential Information concerning the business, affairs, customers,



clients or suppliers of the other Party, except as permitted by Section 6.2 of this Agreement.

6.2. Each Party may disclose the other Party's Confidential Information:

- (a) To its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under this Agreement. Each Party shall reasonably ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this Section 6; and
- (b) As may be required by law, including Ohio Public Record Act, court order or any governmental or regulatory authority.

6.3. No Party shall use any other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

6.4. To the extent that TES receives or is otherwise granted access to personally identifiable information from a student education record maintained by the Institution ("**Student Records**"), TES agrees to maintain such Student Records in accordance with the requirements of the Family Educational Rights and Privacy Act, 20 USC § 1232g, and its implementing regulations, 34 CFR pt. 99. The Institution agrees (i) that TES is performing services for which the Institution would otherwise use its employees, (ii) that the Institution will exercise direct control over all Student Records, and (iii) that the Institution is responsible for maintaining adequate FERPA policies and complying with FERPA's annual notification requirement (34 C.F.R. § 99.7).

## 7. INDEMNIFICATION

7.1. Each Party will not knowingly infringe the intellectual property rights of third parties. Institution makes no representation or warranty that advice or information given by any Institution personnel who work on the program, or the content or use of any results of the Program, will not constitute or result in infringement of third party rights ("**IP Performance**").

7.2. TES shall indemnify and hold harmless Institution and its trustees, directors, officers and employees from and against any claim, lawsuit, settlement, judgment, attorneys' fees, costs, or losses brought by a third party as a result of its negligent acts or omissions in connection with its performance of this Agreement, or its failure to comply with the terms of this Agreement, in each case as determined by a court of competent jurisdiction ("**Contract Performance**");

- 7.3. No Party shall be liable to the other Party for any lost profit or consequential, exemplary, punitive, statutory or other special damages. In addition, except for TES's Indemnification obligations and Institution's obligations under Section 7.4, the maximum amount of damages for which a Party will be liable for hereunder shall be the amount paid by TES to Institution in the 12 months prior to the event giving rise to the loss, liability or damages.
- 7.4. Institution agrees to be responsible for any liability, claim, loss, damage, cost or expenses, including without limitation, reasonable attorney fees, arising from its negligent acts or omissions in connection with its performance of this Agreement, or its failure to comply with the terms of this Agreement, in each case as determined by a court of competent jurisdiction.

## **8. INTELLECTUAL PROPERTY**

- 8.1. Subject to the terms of this Agreement, Institution grants TES the limited, exclusive, non-sublicensable, revocable right and license to use the Institution name, trademarks, service marks, logos, and other corporate indicia (collectively, the "**Institution Marks**") in connection with fulfilling TES's obligations under and subject to the terms of this Agreement, provided that all such use in the materials as referred to in Appendix B shall be subject to the prior review and written approval of Institution relative to Institution's standards of use, such review and written approval may be via email and shall not to be unreasonably delayed or refused.
- 8.2. Except for the limited, express license granted to the Institution for use during the term hereof and in connection with each Program, TES shall retain all right, title and interest in and to all course materials, know-how, methodologies, processes, marketing materials, lead data, technologies or other Intellectual Property Rights (as defined below) contained in the course materials and otherwise used in connection with the Program including any and all additions, improvements, supplements, enhancements or developments thereto. "**Intellectual Property Rights**" means all patents and industrial property rights, patent applications and registrations, trademarks, trademark applications and registrations, copyrights and moral rights, copyright applications and registrations, renewals, extensions, continuations, divisions, and reissues of, and applications for any of the rights referred to herein, Trade Secrets, trade names and industrial designs, domestic or foreign, whether arising by statute or common law. "**Trade Secrets**" means information that is used or may be used in business or for any commercial advantage, derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, is the subject of reasonable efforts to prevent it from becoming generally known, and the disclosure of which would result in harm or improper benefit.

9. Access to University Data by TES.

9.1. To the extent TES shall have access to or use of OSU Data (as defined below), the provisions of this Section 9 shall apply. "OSU Data" means information that TES obtains from the University that is: (i) pertaining or relating to an identified individual; or (ii) subject to laws, regulations, rules, or standards that prohibit or limit disclosure (*e.g.*, the family Educational Rights and Privacy Act (FERPA), the Export Administration Act (EAR), the International Traffic in Arms Regulations (ITAR), or the Health Insurance Portability and Accountability Act (HIPAA), the Genetic Information Nondiscrimination Act (GINA).

9.2. Prohibition of Unauthorized Use of OSU Data. TES agrees to hold OSU Data in strict confidence. TES shall not use or disclose OSU Data received from or on behalf of University except as required by law, or as otherwise authorized in writing by Institution. OSU grants permission for TES to share OSU data with TES' service providers if required to fulfill obligations in this Agreement. TES' service providers are prohibited from uses any data provided by TES for any purpose other than providing services to TES. Similarly, TES agrees that any and all OSU Data shall be used expressly and solely for the purposes enumerated in the Agreement.

9.3. Security Standards. TES agrees that it shall protect the OSU Data it receives from or on behalf of the Institution at all times under the following standards:

i. Network Security. TES shall at all times maintain network security that includes, at a minimum: network firewall provisioning, intrusion detection, and regular third party penetration testing of the network and all relevant computer/data storage devices. Upon Institution's request, TES agrees to provide Institution access to its penetration test results and documentation of its network standards. TES shall also maintain network security that conforms to one of the following:

A. Those standards that Institution applies to its own network, as found at <http://ocio.osu.edu/itsecurity>;

B. Current standards set forth and maintained by the National Institute of Standards and Technology, including those at <http://checklists.nist.gov/repository/>; or

C. Any generally recognized comparable standard that TES applies to its own network.

ii. Data Security. TES shall implement security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated, for example, by Microsoft notification.

iii. Data Transmission. TES shall ensure that any and all transmission or exchange of OSU Data with Institution and/or any other parties expressly designated by Institution shall take place via secure means, *e.g.* HTTPS or FTPS.

iv. Data Storage. TES shall ensure that any OSU Data at any time processed on or transferred to any portable or laptop computing device or any portable storage medium will be protected by reasonable endpoint security methods.

v. Data Encryption. TES shall store all backup OSU Data as part of the its designated backup and recovery processes in encrypted form, using no less than [128 bit key.]<sup>1</sup>

vi. Return or Destruction of Data. Upon cancellation, termination, expiration, or other conclusion of the Agreement, TES shall erase, destroy, and render unreadable all OSU Data, including copies, in possession of TES, its subcontractors and agents and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of Institution, whichever shall come first.

vii. Notification of Network or Data Breach. TES shall report in writing to Institution without undue delay any confirmed breach of TES' systems resulting in the use or disclosure of OSU Data not authorized by the Agreement, including any reasonable belief that unauthorized access to the Data has occurred. TES shall make the report to Institution not less than two (2) business days after TES reasonably believes there has been such unauthorized use or disclosure. TES's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the network element(s) and/or OSU Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what TES has done, or shall do, to mitigate any negative effect of the unauthorized disclosure; and, (v) what corrective action TES has taken, or shall take, to prevent future unauthorized use or disclosure.

- 9.4. TES shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information, any other event requiring such notification ("Notification Event"). Institution may, in its sole discretion, choose to provide notice to any or all parties affected by such breach, but TES shall reimburse Institution for the cost of providing such notification. TES further agrees to provide, or to reimburse Institution for its costs in providing, any credit monitoring or similar services that are necessary as a result of such breach.

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<sup>1</sup> TES to confirm that it complies with this standard.

## **10. TERMINATION**

- 10.1. The Parties may terminate this Agreement at any time by mutual written agreement.
- 10.2. A Party may terminate this Agreement in the event of a material breach of this Agreement by the other Party which breach is not cured within 30 days of the breaching Party's receipt of a written notice concerning the breach; provided, however, that if the breach is not capable of being cured within such thirty (30) day period, the period within which the breaching party has to cure may be extended for so long as necessary to cure the breach so long as the breaching party initiates the cure within the thirty (30) day period and diligently pursues the cure to completion.
- 10.3. A Party may terminate this Agreement with reasonable notice if there is any change in law that prohibits or renders impracticable the continued performance of this Agreement.
- 10.4. In the event of termination of this Agreement per the terms of this Section 10, the Parties shall work together to ensure that students already enrolled in the Program prior to the date of termination be permitted to complete the Program.

## **11. INSURANCE**

11.1. In connection with the performance of this Agreement, TES, at its own cost and expense, shall obtain and maintain in force during the Term, and where claims made insurance coverage applies, for a period of one (1) year after the termination or expiration of this Agreement, the following insurance coverage specified below, on standard policy forms and with insurance companies authorized to do business in the State of Ohio. TES must demonstrate that each policy listed below is underwritten by a carrier with at least an A.M. Best Rating of A-VII. Upon Institution's written request, TES will provide a certificate of insurance evidencing the following: (a) a policy of workers compensation insurance, in amounts required by Ohio law, covering all officers, employees, agents and contractors of TES who are engaged in or connected with the Program or the performance of the Agreement; (b) a policy of commercial general liability insurance including death, personal injury, property damage, liability arising from independent contractors, and products and completed operations, in an amount not less than Two Million Dollars (\$2,000,000) per occurrence. This policy shall include a waiver of subrogation in Institution's favor. The limit requirements of this paragraph may be satisfied by a combination of primary and excess liability coverage; (c) a policy of errors and omissions insurance, including infringement of intellectual property rights coverage including professional liability coverage, in an amount not less than One Million Dollars (\$1,000,000) per claim; and (d) Cyber liability and professional liability with limits not less than Five Million Dollars (\$5,000,000) per claim which covers all professional services rendered by or on behalf of TES under the Agreement.

Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, TES agrees to purchase an Extended Reporting Period Endorsement, effective for one (1) full year after the expiration or cancellation of this policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least one (1) year after the expiration or cancellation of this Agreement. Coverage should include data breach regulatory fines and penalties, the cost of notifying individuals of a security or data breach, the cost of credit monitoring services and any other causally related crisis management expense for up to a year, or as long as reasonably necessary or required by law, and unauthorized access to TES network as well as the unintentional release of personally identifiable information. The insurance policy referenced in (b) above shall (i) contain an additional insured endorsement in favor of "The Ohio State University and its Board of Trustees", and (ii) be written as primary coverage and not contributing with or in excess of any coverage that Institution may carry. Insurance coverage obtained pursuant to this Agreement shall not limit or restrict in any way any liability or obligation to indemnify arising under or in connection with this Agreement or any Program.

## **12. MISCELLANEOUS PROVISIONS**

- 12.1. This Agreement along with its attached Appendices represent the entire understanding between the Institution and TES concerning the subject matter hereof and supersede all prior negotiations, representations and agreements between them, both written and oral, concerning the subject matter hereof. This Agreement may only be modified pursuant to a written amendment signed by duly authorized signatories of the parties. Notwithstanding the foregoing, the Parties may add additional programs to this Agreement by executing a Program Term Sheet in form and substance substantially similar to Appendix A.
- 12.2. The formation of this Agreement, its validity, performance of this Agreement, and the settlement of any disputes between the parties hereunder, shall be governed by the laws of the State of Ohio, excluding its conflict of law provisions.
- 12.3. If any provision of this Agreement shall be held by a tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect.
- 12.4. The waiver by any party of a default under any provision of this Agreement shall not be construed as a waiver of any subsequent default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of a party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

- 12.5. Headings in this Agreement are solely for convenience and shall not be used to define or construe any provision hereof. Ambiguities, if any, in this Agreement shall be reasonably construed in accordance with all relevant circumstances, including, without limitation, prevailing practices in the industry of the parties in the place where the contract is to be performed and shall not be construed against either party, irrespective of which party may be deemed to have authored the ambiguous provision.
- 12.6. This Agreement and any Program Term Sheet may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement or such Program Term Sheet and all of which, when taken together, will be deemed to constitute one and the same instrument. Execution and delivery of this Agreement or any Program Term Sheet by delivery of a facsimile or electronically recorded copy (including a .pdf file) bearing a copy of the signature of a party shall constitute a valid and binding execution and delivery of this Agreement or such Program Term Sheet by such Party. Such copies shall constitute enforceable original documents.
- 12.7. The Parties to this Agreement shall be and remain at all times independent contractors, neither being the employee, agent, representative, joint venture partner, or sponsor of the other in their relationship under this Agreement and neither Party may bind the other Party in any agreement with a third party or otherwise act on behalf of or in the name of the other Party in any fashion without the express written consent of the other Party. All individuals who provide personal services to the Institution under this Agreement are not public Employees for the purposes of Chapter 145 of the Ohio Revised Code, as amended.
- 12.8. Neither Party shall subcontract any of its obligations pursuant to this Agreement without the express written consent of the other party; provided, however, that non-employee independent professional consultants shall be permitted, subject to prior written consent. In the event that a Party subcontracts any work or services under this Agreement or delegates such work or services in accordance with this provision, such Party shall be fully responsible for the compliance of the subcontractor or consultant with this Agreement.
- 12.9. All notices under this Agreement shall be in writing and shall be served either personally, by overnight delivery service, by registered or certified mail, return receipt requested, or by email, addressed to the parties as set forth below. Any notice shall be deemed delivered (a) if personally delivered, when acknowledgment of receipt is signed, or (b) if given by a reputable overnight courier, the next business day after deposit with the courier (provided that proof of delivery is obtained), or (c) if sent by e-mail, upon actual delivery as evidenced by printed confirmation of

transmission. Notwithstanding the foregoing, (i) in the case of e-mail, if the notice or communication cannot be transmitted because of a problem affecting the recipient's computer, then it shall be deemed given and received at the end of the next business day; and (ii) if delivery occurs after 5:00 p.m. (local time where received) or on a non-business day, then such notice or communication so made shall be deemed received on the first business day after the day of delivery. By written notice to the other, either Party may change its notice address.

Notice to TES:

Trilogy Education Services, LLC  
31 E 32<sup>nd</sup> Street  
New York, NY 10016  
Attn: CEO

Notice to the Institution

The Ohio State University  
College of Engineering  
1080 Carmack Rd  
Columbus, OH 43214  
Attn: Bob Mick  
With a copy to: Sunny Zong via email at zong.7@osu.edu

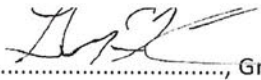
- 12.10. A **"Force Majeure"** event shall mean any event, circumstance or condition that (i) directly or indirectly prevents the fulfillment of any material obligation specified under this Agreement by one (or both) Party, (ii) is beyond the reasonable control of the Party, and (iii) could not, by the exercise of due diligence and prudence, have been avoided or overcome in whole or in part by such Party. Subject to the aforementioned items (i), (ii) and (iii), a Force Majeure event includes, but is not limited to, acts of God, war, terrorism, civil commotion, riot, blockade or embargo, delays of carriers, fire, explosion, organized labor dispute, casualty, accident, earthquake, epidemic, pandemics, flood, windstorm, or by reason of any law, order, proclamation, regulation, ordinance, demand, expropriation, requisition or requirement or any other act of any governmental authority, including military action, court orders, government-mandated shelter in place, judgments or decrees and resulting supply chain failure. Any delay or failure in performance of this Agreement caused by an event of Force Majeure shall not constitute default by the Party prevented from performing the Agreement or give rise to any claim for damage, losses or penalties. Under such circumstances, both Parties are still under an obligation to take reasonable measures to implement this Agreement, so far as is practical. Once the Force Majeure event ends, the Party that has been prevented from performing shall notify the other Party as soon as possible of the end of such event, and the other Party shall confirm receipt of such notice. Both Parties should




then continue to perform their respective obligations under the Agreement or agree to adjust the Period of Performance in light of the intervening events of Force Majeure.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

TRILOGY EDUCATION SERVICES, LLC

  
....., Greg Calverase, Managing Director  
duly authorized for and on behalf of **TES**

THE OHIO STATE UNIVERSITY

  
....., Michael Papadakis, Senior Vice President for Business &  
Finance and CFO duly authorized for and on behalf of **Institution**

**APPENDIX B**



**THE OHIO STATE  
UNIVERSITY**

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**COLLEGE OF ENGINEERING**